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Adoption in the Progressive Era: Preserving, Creating, and Re-Creating Families

by CHRIS GUTHRIE* AND JOANNA L. GROSSMAN**

The history of adoption law and practice has received scant attention from legal scholars and historians.¹ Most of what little scholarship there is focuses on the history of adoption to the mid-nineteenth century, when the first adoption statutes emerged in the United States.² Although the enactment of these statutes has been hailed as "an historic moment in the history of Anglo-American family and society"³ and "the most far-reaching

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1. This is surprising because adoption is one of our oldest and most significant family law institutions. It dates back at least as far as the Code of Hammurabi, see Louis Quarles, *The Law of Adoption—A Legal Anomaly*, 32 MARQ. L. REV. 237, 240 (1949), and was practiced by numerous ancient peoples, including the Egyptians, Greeks, Japanese, and Romans, *id* at 237-40. In the modern era, adoption is common. In the United States, for instance, approximately three percent of families have an adopted child, see *Figuratively Speaking*, 83 ABA JOURNAL 16 (Jan. 1997) (citing ADOPTION FACTBOOK), and something on the order of one-third of the American population is affected by one or more adoptive relationships. See ADOPTION IN AMERICA, 1981: HEARING BEFORE THE SUBCOMMITTEE ON AGING, FAMILY AND HUMAN SERVICES OF THE SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES, 97th Cong., 1st Sess. 114, 119 (1981), cited in Jan Ellen Rein, *Relatives by Blood, Adoptions, and Association: Who Should Get What and Why*, 37 VAND. L. REV. 711, 712 n. 2 (1984).

2. See, e.g., C.M.A. McCauliff, *The First English Adoption Law and its American Precursors*, 15 SETON HALL L. REV. 656 (1986) (focusing on the history of the early American statutes of the 1850s and the first English adoption statute enacted in 1826); Yasuhide Kawashima, *Adoption in Early America*, 20 J. FAMILY L. 677 (1981-82) (examining adoption practices in America prior to the passage of adoption statutes in the mid-nineteenth century); Jamil S. Zainaldin, *The Emergence of a Modern American Family Law: Child Custody, Adoption, and the Courts, 1796-1851*, 73 N.W. L. REV. 1038 (1979) (analyzing the emergence of American adoption statutes in light of changes in conceptions of the family and child custody law); Stephen B. Presser, *The Historical Background of the American Law of Adoption*, 11 J. FAMILY L. 443 (1971) (examining the history of adoption to the mid-nineteenth century, including the treatment of adoption-related issues by state appellate courts in the 1870s and 1880s); Quarles, *supra* note 1 (providing a brief history of adoption law with particular attention to the 1858 statute enacted in Wisconsin); Catherine N. McFarlane, *The Mississippi Law on Adoptions*, 10 MISS. L.J. 239 (1938) (describing the origin of Mississippi's adoption statute, the first such statute enacted in America).

3. Zainaldin, *supra* note 2, at 1085.

innovation of nineteenth-century custody law,"⁴ few scholars have made an effort to document the actual operation of adoption law following the enactment of these landmark statutes.⁵

This article does just that. Drawing from actual trial court records, orphanage reports, appellate court decisions, and other sources, we describe the law and practice of adoption in the late nineteenth and early twentieth centuries⁶ in Alameda County, California, and argue that the adoption statutes (at least the California statutes) made three distinct types of adoption possible:

Family preservation adoption, which reflected a tie to past, informal "adoption" practices, enabled adopters to keep already-established families and family money together.

Family creation adoption, which emerged as the dominant type of adoption in the late nineteenth and early twentieth centuries, gave childless couples a way to approximate the biological parent-child relationship.

And *family re-creation* adoption, a precursor to the modal practice of adoption in the mid-to-late twentieth century, enabled stepfathers to remake families previously disrupted by divorce or death.

I. THE ADOPTION STUDY

A. Background

Adoption was unknown at common law.⁷ Although Massachusetts is generally cited as the first American state to have enacted a comprehensive

4. MICHAEL GROSSBERG, *GOVERNING THE HEARTH: LAW AND THE FAMILY IN NINETEENTH-CENTURY AMERICA* 268 (1985).

5. See Julie Berebitsky, "To Raise as Your Own": *The Growth of Legal Adoption in Washington*, 6 WASH. HIST. 5, 6 (1994) (using the records of "two dominant child-care agencies," not court records, to "reconstruct[] the experience of adopting a child in Washington [D.C.]"); Peter Romanofsky, *The Early History of Adoption Practices, 1870-1930* (1969) (unpublished Ph.D. dissertation). For studies of adoption during a later period, see Elinor Nims, *The Illinois Adoption Law and its Administration* (1928), in DAVID J. ROTHMAN & SHEILA M. ROTHMAN, *THE ORIGINS OF ADOPTION* (1987) (examining the practice of adoption in Illinois, primarily in Cook County, during 1925); Ida R. Parker, "Fit and Proper"? *A Study of Legal Adoption in Massachusetts* (1927), in ROTHMAN & ROTHMAN (examining the practice of adoption in Massachusetts, primarily in Suffolk and Norfolk Counties, from 1922-25).

6. This period is commonly referred to as the "Progressive Era." See, e.g., MARY ANN MASON, *FROM FATHER'S PROPERTY TO CHILDREN'S RIGHTS: THE HISTORY OF CHILD CUSTODY IN THE UNITED STATES* 85 (1994).

7. Presser, *supra* note 2, at 443. See also Lawrence M. Friedman, *A Moving Target: Class, Gender, and Family Law in the Nineteenth Century United States* 13 (unpublished manuscript, on file with the authors). Of course, prior to the enactment of these statutes, parties informally "adopted" children through wills, voluntary and involuntary indentures, private legislative acts, and other means. See generally Kawashima, *supra* note 2, at 677; Presser, *supra* note 2, at 456-64.

public law of adoption,⁸ at least four other states had enacted adoption statutes prior to Massachusetts: Mississippi, Alabama, Texas, and Vermont.⁹ None, however, enacted a statute as far-reaching or comprehensive as the Massachusetts act. Within twenty-five years of its enactment, twenty-four states had passed similar adoption statutes.¹⁰

These newly-enacted adoption statutes took one of two forms.¹¹ Some, like the Texas and Missouri statutes, aimed simply to ratify and record private adoption agreements, while others provided for judicial supervision of the adoption process. California's adoption law,¹² enacted on March 31, 1870, was of the second, more intrusive type.¹³ Under the California law, an adult could adopt any minor at least 10 years younger than that adult.¹⁴ Depending upon the circumstances, several parties were required to consent to the adoption before the judge could approve it. If the adoptive parent was married, spousal consent was required.¹⁵ If the adoptee was over the age of twelve, the adoptee's consent was required.¹⁶ The biological parents, if living, were usually required to consent; if the child was born out of wedlock, however, the mother's consent alone would suffice.¹⁷

The petitioners, the child, and the others whose consent was required appeared before the local superior court judge to sign the adoption

8. See, e.g., Friedman, *supra* note 7, at 13 ("Credit for introducing adoption as a legal status is often given to a statute passed in 1851 in Massachusetts."); Kawashima, *supra* note 2, at 677; McCauliff, *supra* note 2, at 666; Presser, *supra* note 2, at 465; Zainaldin, *supra* note 2, at 1042.

9. Mississippi enacted the first American adoption statute in 1846. MISS. LAWS 1846, c. 60, MISS. CODE (Hutchinson 1848) ch. 35, art 2. For a comprehensive description of the emergence of the Mississippi law, see McFarlane, *supra* note 2, at 239. By 1850, Alabama, Texas, and Vermont also had adoption statutes on their books. See LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 211 (2d ed. 1985); Presser, *supra* note 2, at 465, n.106.

10. Kawashima, *supra* note 2, at 677-78.

11. Presser, *supra* note 2, at 466.

12. "An Act providing for the adoption of minors, and the legitimizing of children born out of wedlock." STATUTES OF CALIFORNIA, Ch. 385 (1870).

13. Presser, *supra* note 2, at 465-66. But see *In re Johnson*, 98 Cal. at 546 (J. Harrison, dissenting) ("The provisions of the Civil Code of this state [California] differ materially from those of any other state to which our attention has been called, and are characterized by much greater simplicity.").

14. CAL. CIV. CODE §§ 221-22 (Hart 1892). The California statute in effect during the period of our study was almost identical to the original statute. One difference, however, was that under the original statute, only those children at least 15 years younger than a petitioner—not those 10 years younger—were eligible for adoption by that petitioner. STATUTES OF CALIFORNIA, Ch. 385 § 1 (1870).

15. CAL. CIV. CODE § 223 (Hart 1892).

16. CAL. CIV. CODE § 225 (Hart 1892).

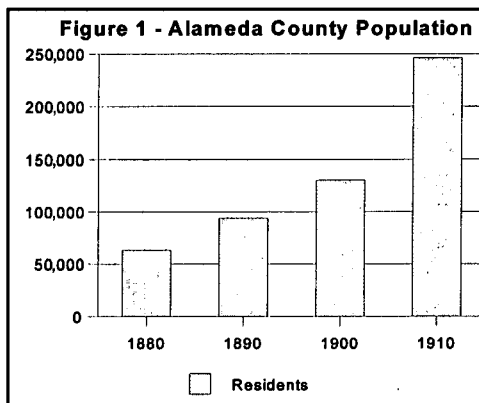
17. CAL. CIV. CODE § 224 (Hart 1892) (Consent required "except that consent is not necessary from a father or mother deprived of civil rights, or adjudged guilty of adultery, or of cruelty, and for either cause divorced, or adjudged to be a habitual drunkard, or who has been judicially deprived of the custody of the child on account of cruelty or neglect.").

agreement and consent forms.¹⁸ The statute required the judge to conduct a separate "examination" of each of these persons¹⁹ to determine whether "the interests of the child will be promoted by the adoption."²⁰ Once the judge issued the adoption order, the adoptive parent(s) and child sustained "towards each other the legal relation of parent and child, and ha[d] all the rights and [were] subject to all the duties of that relation."²¹ Conversely, the biological parents were "relieved of all parental duties towards, and all responsibility for, the child so adopted, and [had] no right over it."²²

B. Locus and Methodology

This article reports adoptions obtained in Alameda County, California. During the period of our study—the late nineteenth and early twentieth centuries—Alameda County, an urban and suburban county located on the east side of San Francisco Bay, had already emerged as a prominent, highly populated part of the northern California landscape. Organized in 1853, shortly after California became a state, Alameda County was home to several sizeable cities, including Oakland, Berkeley, and Fremont. Throughout the period of this study, Alameda County's population grew from 93,864 in 1890 to nearly a quarter of a million residents in 1910.²³ (See Figure 1.)

Prospective adoptive parents filed for adoption in Alameda County's civil court, where their petitions were recorded in the Alameda County Civil Court Register of



18. CAL. CIV. CODE § 226 (Hart 1892).

19. See *In re Williams*, 102 Cal. 70, 80-81 (1894) ("[T]he object of the statute in directing the judge to make a separate examination of the parties, was for the protection of a wife, or child over the age of twelve years, whose consent is made essential to the creation of the contract, by guarding them in some degree from the possible coercive influence of the husband or parent, and also to enable the judge to ascertain whether the consent of such persons was entirely free.").

20. CAL. CIV. CODE § 227 (Hart 1892).

21. CAL. CIV. CODE § 228 (Hart 1892).

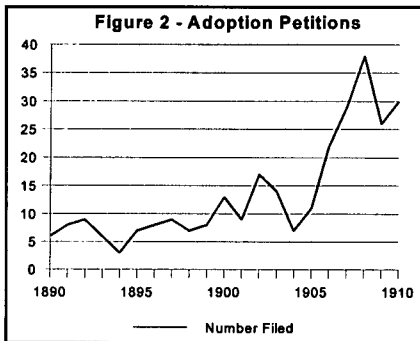
22. CAL. CIV. CODE § 229 (Hart 1892). See also *Younger v. Younger*, 106 Cal. 377, 379 (1895) ("By the adoption proceeding, however, the status of the child was wholly changed; it became *ipso facto* the child of another, and ceased to sustain that relation, in a legal sense, to its natural parents.").

23. Lawrence M. Friedman & Robert V. Percival, *A Tale of Two Courts: Litigation in Alameda and San Benito Counties*, 10 LAW & SOC. REV. 267, 273 (1976).

Actions.²⁴ Using this register, we identified the adoption petitions filed in the county from 1890 to 1910. Having identified the adoption petitions filed, we then located and analyzed the 125 adoption case files available from 1895 to 1906.²⁵ We also reviewed Bay Area orphanage reports, California appellate court decisions, local newspapers, and other secondary sources.

C. Results

During the period of our study, adoption did not loom large on the civil docket. From 1890 to 1910, prospective adoptive parents filed an average of 13 petitions per year, ranging from a low of three petitions in 1894 to a high of 38 petitions in 1908. (See Figure 2.) Adoption accounted for only 1.1% of the total number of civil cases filed in Alameda County during this period. (See Table 1.)²⁶



YEAR	ADOPTION PETITIONS	TOTAL CIVIL PETITIONS
1890	6	716
1891	8	811
1892	9	876
1893	6	1,172
1894	3	1,112
1895	7	1,249
1896	8	1,486
1897	9	1,256
1898	7	1,115
1899	8	911
1900	13	941
1901	9	961
1902	17	932
1903	14	993
1904	7	994
1905	11	1,113
1906	22	1,773
1907	29	2,120
1908	38	2,266
1909	26	2,264
1910	30	3,320
TOTAL	287	28,381

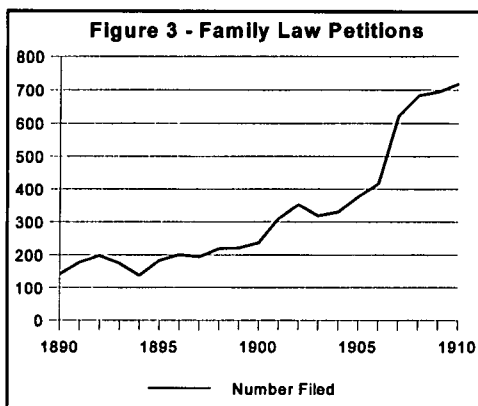
24. Adoption records are difficult to obtain and are often shrouded in secrecy. We were lucky to find actual trial court records from Alameda County. See Victor E. Flango, *Are Courts an Untapped Source of Adoption Statistics?*, 11 ST. COURT J. 12, 13 (1987) ("Despite the efforts of many talented people, even the most basic data, including data on the total number of adoptions in the United States, are unavailable. There have been efforts to collect this information, but they have their limitations."). See also Annette Ruth Appell, *Blending Families Through Adoption: Implications for Collaborative Adoption Law and Practice*, 75 B.U. L. REV. 997, 997 (1995) ("The adoption paradigm that has dominated most of this century is one of exclusivity, secrecy, and transposition, through which the adoptee—usually an infant—is taken from one family and given to another, with all vestiges of the first family removed. The records of this transplant are sealed, and all parties venture forth as if the first family never existed and the second was created through an act of nature.").

25. We selected these years to study because Stanford Law School possesses the original Alameda County civil records from this period. The Alameda County Civil Court Register of Actions reports that 132 adoption petitions were filed from 1895 to 1906, but we were able to locate only 125 case files.

26. To further assess adoption's place in the civil justice system during this period, we took a random sample of civil cases filed in Alameda County Superior Court from 1895 to

Family law actions as a whole occupied a sizeable portion of the civil court's time and caseload, accounting for about a quarter of the court's business. From 1890 to 1910, the average number of family law actions filed per year was 328, ranging from 141 in 1890 to 718 in 1910. (See Figure 3.) Over the course of these two decades, adoption accounted for about four percent of the family law cases filed. (See Table 2.) In some years, of course, adoption figured more prominently; in 1908, for instance, adoption accounted for nearly six percent of the family law cases filed. In other years, however, adoption was but a blip on the screen; in 1894, for instance, adoption accounted for only two percent of the family law cases on the docket.²⁷

Most family law cases during this period, 90-95% of the total number of family law cases filed, were divorce actions. (See Table 2.) For every adoption, approximately 20 disgruntled spouses



YEAR	ADOPTION PETITIONS	DIVORCE PETITIONS	OTHER FAMILY	TOTAL
1890	6	125	10	141
1891	8	167	3	178
1892	9	185	4	198
1893	6	164	5	175
1894	3	130	4	137
1895	7	169	7	183
1896	8	189	4	201
1897	9	180	5	194
1898	7	206	6	219
1899	8	201	12	221
1900	13	218	6	237
1901	9	283	18	310
1902	17	328	7	352
1903	14	299	6	319
1904	7	309	14	330
1905	11	354	12	377
1906	22	385	9	416
1907	29	570	23	622
1908	38	637	8	683
1909	26	651	17	694
1910	30	668	20	718
TOTAL	287	6,418	200	6,905

1907 and catalogued them by type of action. Of the 2,634 actions we catalogued, fewer than 30 were adoption cases.

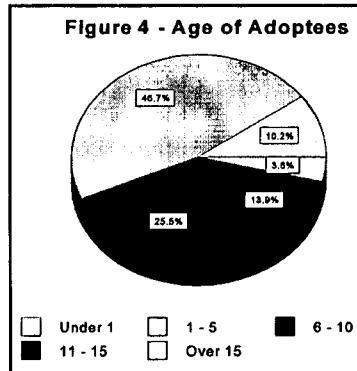
Our results, based on a sample of 20% of the cases, are comparable to the results obtained by Friedman & Percival, who catalogued 14% of Alameda County cases filed during 1890 and three percent of the cases filed during 1910. Friedman & Percival, *supra* note 23, at 281.

27. Adoption was also less common than other significant personal and family landmarks, such as births, marriages, and deaths. In 1900, for example, there were 13 adoption petitions filed in Alameda County; by comparison, there were at least 1,336 marriages. DEPARTMENT OF COMMERCE AND LABOR, U.S. BUREAU OF THE CENSUS, MARRIAGE AND DIVORCE

showed up to file divorce papers.²⁸ About half of the divorce cases during this era involved spouses with children; roughly 70% of these resulted in some sort of custody disposition, generally affecting about two children per custody order.²⁹ Thus, for every adoption during this period, courts and parents "divided" 20 children as part of divorce cases.³⁰ These divorces and their custody dispositions obviously affected the lives of many more Alameda County children than did the occasional adoption.³¹

Although adoption did not occupy a significant portion of the civil docket, it was undoubtedly a significant event for the parties involved, namely the adopters and adoptees. The adopters in our study consisted of 98 couples and 27 single adults, most of whom were either stepfathers or widows. The average adoptive mother was approximately 41 years old, while the average adoptive father was about 43. The vast majority of these adoptive parents employed legal counsel to secure their adoptions, but as many as 10-15% of them appeared *pro se*.

These petitioners adopted 137 children, most of whom were girls. More than half of the children adopted were age five or younger, while fewer than four percent were over age 15. (See Figure 4.) The average adopted girl was five years old at the time of her adoption, while the average boy was almost seven. Many of the adoptees were born in wedlock, but a substantial minority was not. The children were available for adoption for a



1867-1906, PART II 790, 790 n.2 (1908). And in Oakland alone, which accounted for only slightly over half of the county's population, there were 1,255 births and 1,121 deaths reported in 1900. U.S. BUREAU OF THE CENSUS, VITAL STATISTICS, PART I 296 (1902).

28. We have established a database containing detailed information on a random sample of 583 divorce cases heard in the Alameda County Superior Court during approximately the same time period, 1895-1907. Data on file with the authors.

29. In our sample of divorce cases from 1895-1907, we collected data on 583 divorces, of which 292 involved children. Divorce was granted in 220 of the 292 cases. The records contained custody dispositions in 203 of these cases. Data on file with the authors.

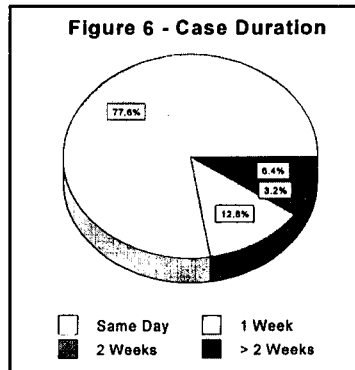
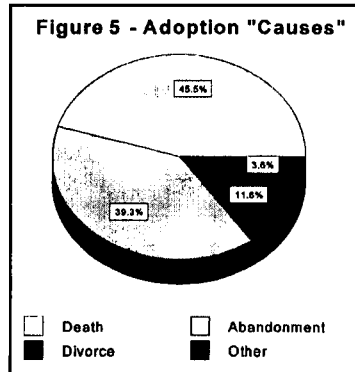
30. See, e.g., ELEANOR E. MACCOBY & ROBERT H. MNOOKIN, *DIVIDING THE CHILD: SOCIAL AND LEGAL DILEMMAS OF CUSTODY* (1992).

31. The courts also provided for the creation of substitute parent-child-type relationships via guardianship, a probate proceeding in which courts appoint a guardian to care for minors and their property. In 1890, 1895, 1900, and 1905, petitioners applied for guardianship of one or more minors in 336 cases. See Lawrence M. Friedman, Joanna L. Grossman & Chris Guthrie, *Guardians: A Research Note*, 40 AMER. J. LEG. HIST. 146, 149 (1996). During those same four years, petitioners filed for adoption in 37 cases. For every adoption petition filed in 1890, 12 petitioners filed for guardianship; for every adoption petitioner in 1905, nearly six petitioners sought guardianship. On average, guardianship of minors outpaced adoption by almost a ten-to-one ratio during this period.

variety of reasons, but three loomed largest. Death of natural parents was the underlying "cause" of adoption in more than 45% of the cases, parental abandonment in nearly 40% of the cases, and divorce in more than 10% of the cases. (See Figure 5.)³²

The adoption petitioners were quite successful in adopting the children they sought. In fact, *every* Alameda County petitioner from 1895 to 1906 secured adoption papers from the court, and most did so the same day they filed their petition. Roughly three-fourths of the 125 adoption cases in our study were resolved the same day they were filed, and more than 90% were resolved within one week of the date filed. Only 6.4% of all adoption actions took longer than two weeks to resolve. (See Figure 6.)³³ By contrast, the average Alameda County divorce case during this era took more than thirteen *months* to resolve,³⁴ divorce cases involving children took nearly fifteen months to resolve,³⁵ annulments took nearly four months,³⁶ and guardianships took nearly three weeks.³⁷

Because the court processed adoption cases almost as soon as they appeared, and because the court approved every adoption petition filed, it seems clear that the court subjected adopters and the petitioners they filed to minimal scrutiny. On occasion this haste led to harmful results. In one case, Mary Larmer petitioned to adopt her two grandchildren, Charles and



32. In a number of cases—13 of the 125 in our study—we could not identify why the adoptee was available for adoption.

33. The few adoptions that took more than three weeks to resolve required extra time because the court had some difficulty locating parties whose consent was required. In one extreme example of this, Albert Keesing and Florence Benini abandoned their nine-year-old daughter Florence. Albert went off to New York to live, while Florence left the country for Italy. Albert's mother, Florence's paternal grandmother, petitioned to adopt Florence on December 9, 1898. The court approved her petition but not until March 31, 1899. The delay was caused by the difficulty the court encountered locating Florence's parents. Docket #15763.

34. Data on file with the authors.

35. Data on file with the authors.

36. Joanna L. Grossman & Chris Guthrie, *The Road Less Taken: Annulment at the Turn of the Century*, 40 AMER. J. LEG. HIST. 307 (1996).

37. Friedman, Grossman & Guthrie, *supra* note 31, at 152.

Edward.³⁸ In court, Mary claimed that the boys had been abandoned by their parents, who were nowhere to be found. The court accepted her story without question and granted her petition the day it was filed. Subsequently, Edward and Sarah Schiller, the parents of the boys, sought an order setting aside the adoption because it had been fraudulently obtained. It turns out that Mary had invited the boys to stay with her temporarily. During that stay, Mary had concocted the abandonment story, secured the boys' adoption, taken the boys out of the state, and refused to return them to their parents.

In another case, Robert and Mattie Vincent petitioned to adopt Ruth Garcewich. Ruth lived with her "aunt," Winefred Herbert, who represented to the judge that Ruth's mother had died and that her father had abandoned her. Winefred consented to the adoption petition filed by the Vincents, and the court granted the adoption. Five years later, the Vincents petitioned the court to annul the adoption on the ground that Winefred, Ruth's "aunt," had misled them about her identity. It turns out that Winefred was not Ruth's aunt but her natural mother! Despite the examinations it had supposedly conducted at the hearing, the court failed to uncover the identity and relationship of the parties involved. In their petition to annul the adoption, the Vincents charged:

. . . [T]he true facts are now known to be as follows: That the so-called Ruth Garcewich is not the child of the deceased sister of said Winefred Herbert but is a child of said Winefred Herbert . . . That the said Winefred Herbert has, within the last year, sought the society of said child and obtained it by meeting the said child on the streets and at school . . . and has explained to said child that she is the mother of said child. . . .³⁹

Apparently Winefred's behavior caused Ruth to become "hateful, ugly and disobedient," making it "impossible to carry out the purpose and objects of said adoption."⁴⁰ The court was persuaded, annulling the adoption on September 4, 1908.

These cases were no doubt exceptional. In a majority of the cases, petitioners who used the adoption proceeding formed "substitute" parent-child relationships that were likely beneficial to children and parents alike. The following section describes the three types of substitute parent-child relationships the adoption statutes made possible.

II. THE THREE TYPES OF ADOPTION

The adoption statutes authorized a single process called "adoption" but effectively produced three distinct types of parent-child relationships. In this section—based on a subset of 86 cases⁴¹—we describe and

38. Docket #24166.

39. Docket #19570, *Petition to Annul*.

40. *Id.*

41. Because information was too sketchy in the remaining files in our sample to draw any conclusions about the adopters, adoptees, "causes" of adoption, purposes for which it was sought, etc., we excluded those files from the analysis in this section.

compare the three types of adoption in operation at the turn of the century: family preservation, family creation, and family re-creation adoption.

A. Family Preservation

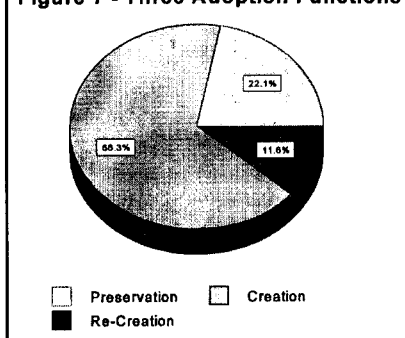
Adoption often functioned to preserve families and family money. In *family preservation* adoptions—22.1% of the adoptions in our study—an older adult or couple sought to adopt a young relative or relatives to preserve family ties, family heritage, and family wealth. (See Figure 7.)

Before the adoption statutes were enacted, adults informally “adopted” children related to them by blood or marriage to keep families and family money together.⁴² In colonial America, long before the first adoption statutes were enacted, the “putting out” of children “was the way the colonists cared for orphans.”⁴³ According to Kawashima, “[p]arents ordinarily provided for the disposition of the child in their wills and usually had him reared by a relative, elder stepbrother, grandparent, stepparent, elder brother, elder sister, aunt, or uncle.”⁴⁴ Even where no will gave explicit child care directions, however, “there was apparently a similar pattern of placing orphans in the homes of relatives.”⁴⁵

After the adoption statutes were passed, formal adoptions of this type began to occur as well. The typical family preservation adoption involved an older adult, often a grandparent, filing a petition to adopt an older, legitimate child or children, who had recently been orphaned. Often, the adoption papers made specific reference to family preservation, to a deceased family member’s will, or to inheritance in describing the adopter’s motives.

Grace Nosler, for example, adopted her sister’s son Harold to keep the family together.⁴⁶ Harold’s father had died before Harold had reached his seventh birthday. Following his father’s death, Harold and his mother moved in with Harold’s aunt and uncle, Grace and Thomas Nosler. Harold’s mother eventually took ill. While on her deathbed, she asked her sister and brother-in-law to adopt Harold and keep the family together. Two months

Figure 7 - Three Adoption Functions



42. Kawashima, *supra* note 2, at 689 (“The majority of colonial adoptions involved children of relatives, such as nephews, nieces, grandchildren, and wife’s nephews and nieces . . .”).

43. *Id.* at 683.

44. *Id.*

45. Presser, *supra* note 2, at 457.

46. Docket #17840.

after she died, Grace and Thomas Nosler petitioned the court to adopt Harold, then 11 years old. The court granted their petition.⁴⁷

In a similar case, Norman Wiley lost his mother when he was eight years old and his father when he was 10. In his will, Norman's father had nominated Norman's grandfather to be Norman's guardian. One month after Norman's father died, his grandfather and grandmother petitioned to adopt Norman to preserve the family and prevent him from depleting his \$5,000 inheritance.⁴⁸

In these family preservation adoptions—roughly one-fifth to one-quarter of those processed in the courts during this period—an older adult or couple sought to keep a family together by adopting a nephew, grandchild, or some other child relative.

B. Family Creation

Family preservation adoption⁴⁹ gave way in importance over the course of the nineteenth century to a second type of adoption—*family creation* adoption—which became the modal type of adoption in the late nineteenth and early twentieth centuries. In family creation adoptions—approximately two-thirds of those obtained during the progressive era⁵⁰—a younger couple sought to create a brand new family, or add to an existing one, by adopting a child, generally a “dependent” child,⁵¹ to whom the couple was unrelated.

During the period of our study, California was home to proportionally more dependent children than any other state.⁵² Commentators attributed the high rate of child dependency to a variety of factors, including alcohol consumption, “Bohemianism,” the high proportion of immigrants in the state, illegitimacy, and even the mild California climate.⁵³ To address this social problem, the so-called “child-savers”⁵⁴—charitable workers and

47. *Id.*

48. Docket #24376.

49. See Section II. A., *supra*.

50. See Figure 7, *supra*.

51. According to Susan Tiffin, an 1899 Illinois statute provided a fairly typical definition of a “dependent” child:

[T]he words dependent child and neglected child shall mean any child who for any reason is destitute or homeless or abandoned; or has not proper care or guardianship; or who habitually begs or receives alms; or who is found living in any house of ill-fame or with any vicious or disreputable person, or whose home, by reason of neglect, cruelty or depravity on the part of its parents, guardians or other person in whose care it may be, is an unfit place for such a child; any child under the age of eight who is found peddling or selling any article or singing or playing any musical instrument upon the street or giving any public entertainment.

SUSAN TIFFIN, IN *WHOSE BEST INTEREST? CHILD WELFARE REFORM IN THE PROGRESSIVE ERA* 38-39 (1982).

52. WILLIAM H. SLINGERLAND, *CHILD WELFARE WORK IN CALIFORNIA* 17 (1916).

53. *Id.* at 193-97.

54. See generally MICHAEL B. KATZ, IN *THE SHADOW OF THE POORHOUSE: A SOCIAL HISTORY OF WELFARE IN AMERICA* 113-45 (1986).

philanthropists—set up institutions designed to meet the needs of dependent children.⁵⁵ In 1850, child-savers started a Jewish home,⁵⁶ then the San Francisco Protestant Orphan Asylum in 1851, and the Roman Catholic Orphan Asylum in 1852.⁵⁷ Soon, orphanages “began to flourish and multiply faster in California than in any other state of comparable population, and continued to do so until they reached their peak in 1903.”⁵⁸

Some of the orphanages and other child-saving institutions provided adequate care to the children they housed,⁵⁹ but many did not.⁶⁰ According to California child-saver Katharine Felton, conditions in Bay Area institutions during the 1890s were intolerable:

In San Francisco, before the fire, conditions in many institutions were as terrible as anything to be found in the old English poorhouses. There was no state law to prevent anyone from going into children's work. Mercenary, sometimes criminal persons took it up as a profession. One cannot imagine a state of things that could be worse. . . .⁶¹

Orphanages were apt to be cold and gloomy structures remarkably ill-suited to their purpose, and with inadequate and untrained staffs. Hygiene and health care were primitive; the meals were badly cooked, monotonous, and ninety per cent starch. Above all, orphanages were overcrowded.⁶²

55. Walter Trattner notes that the child welfare movement emerged not solely due to concern for dependent children but also due to desire for social control:

A growing concern with child welfare, however, was not merely a matter of pity or compassion. Indeed, it resulted above all from the fact that most citizens viewed the child as the key to social control. If future generations were to possess the strength of mind, body, and character to become good, self-supporting citizens, able to assume the responsibilities and burdens of democratic rule, they had to be protected as children. Youngsters, in other words, were the hope—or the threat—of the future.

WALTER I. TRATTNER, *FROM POOR LAW TO WELFARE STATE: A HISTORY OF SOCIAL WELFARE IN AMERICA* 111 (5th ed. 1994).

56. For a history of Jewish orphanages in the United States, see REENA SIGMAN FRIEDMAN, *THESE ARE OUR CHILDREN: JEWISH ORPHANAGES IN THE UNITED STATES, 1880-1925* (1994).

57. Joan Gittens describes the same phenomenon occurring at the same time in Cook County, Illinois. See JOAN GITTENS, *POOR RELATIONS: THE CHILDREN OF THE STATE OF ILLINOIS, 1818-1990* 27 (1994).

58. JEAN BURTON, *KATHARINE FELTON AND HER SOCIAL WORK IN SAN FRANCISCO* 43 (1947).

59. See, e.g., BURTON, *supra* note 58, at 44 (“Children’s institutions were practically all denominational homes, modeled on accepted Nineteenth Century patterns. In some, the children were given humane and kindly care.”).

60. See, e.g., TRATTNER, *supra* note 55, at 116 (“Although these separate institutions were on the whole superior to the almshouses as places for child care and conditions among them varied, they too had many defects. Most were large, congregate institutions which brought together under a single roof anywhere from fifty to as many as 2000 children. Managers of such institutions put a premium on order, obedience, and precision. The poor wards commonly slept and ate together in large dormitories or barracks. Their lives were governed by extremely rigid schedules, individuality was suppressed, and the atmosphere was one of monotonous routine . . . The often provided poor and protracted care.”). See generally TIFFIN, *supra* note 51, at 67-76.

61. *Id.* at 46.

62. *Id.* at 47. See also ANNUAL REPORT OF THE SAN FRANCISCO NURSERY FOR HOMELESS CHILDREN (1893). The San Francisco Nursery for Homeless Children reported that of the 91

Among the child-saving institutions, conditions in the foundling hospitals were particularly poor.⁶³ These institutions—like the San Francisco Lying-In Hospital, where three of the children in our study were abandoned—housed dependent infants, often children born out of wedlock and then deserted by their mothers. The mortality rate in these institutions was generally around 50 to 75%,⁶⁴ and “sometimes reached between 85 to 90 percent.”⁶⁵

During the late nineteenth and early twentieth centuries, the child-savers’ view of child care underwent a transformation, reflecting concern about the quality of institutional care children were receiving.⁶⁶

children admitted in 1892, eight died, while only five were adopted. *Annual Report of the Secretary, ANNUAL REPORT OF THE SAN FRANCISCO NURSERY FOR HOMELESS CHILDREN 7* (1893). Despite the fact that nearly 10% of its charges died during the year, the Nursery celebrated this turn of events:

Upon comparing this report with the one for the previous year, it is a noticeable fact that the death-rate has decreased materially during the past year, the number of deaths in 1891 being 29. This shows most conclusively that the course of medical treatment adopted by the Board of Managers at the beginning of the year, has been thoroughly satisfactory.

Id.

63. See GEORGE B. MANGOLD, *PROBLEMS OF CHILD WELFARE* 537-38 (1925) (“The mortality rate in these institutions [foundling asylums] is frequently enormous. Many of the children, it is true, are received in a precarious condition, and suffer from malnutrition, premature birth, physical defects, or inanition, while illegitimacy is usually a factor. Despite these obstacles, the proper care of the babies can substantially reduce the death rate. Usually these asylums accept too many children and overcrowd the various wards. Frequently the inmates are not properly fed and seldom do they receive sufficient individual attention.”).

64. BURTON, *supra* note 58, at 90 (“The local mortality rate [in the San Francisco Bay Area] among foundlings has soared to 59% after the fire [of 1906]; in some parts of California it normally averaged between 50% and 75%.”).

65. VIVIANA A. ZELIZER, *PRICING THE PRICELESS CHILD: THE CHANGING SOCIAL VALUE OF CHILDREN* 174 (1986). Due to a foundling asylum fire that killed twenty-five infants, including one that she had placed there herself, Katharine Felton began a program of boarding infants out in foster homes rather than keeping them in these institutions. In 1908, the San Francisco Foundling Asylum placed all of its infants in Felton’s agency, the Children’s Agency, to be boarded out. In its first year of operation, the death rate of abandoned infants dropped from 59% (in the foundling asylum) to 12.8% (when infants were placed out in homes by the Children’s Agency). BURTON, *supra* note 58, at 88-92. For background on the history of infant mortality in America, see RICHARD A. MECKEL, *SAVE THE BABIES: AMERICAN PUBLIC HEALTH REFORM AND THE PREVENTION OF INFANT MORTALITY 1850-1929* (1990).

66. FRANCES CAHN & VALESKA BARY, *WELFARE ACTIVITIES OF FEDERAL, STATE, AND LOCAL GOVERNMENTS IN CALIFORNIA, 1850-1934* 18 (1936) (referring to a “drift from institutional care to home care.”). See also KATZ, *supra* note 54, at 118 (“Institutions offended promoters of the priceless child. They shuddered at the fate of the precious children denied a home and worried about the impact of early incarceration on their adult personalities. Most critics of institutions made the same points: the regimented monotony of institutional life dulled children’s personalities and destroyed their capacity for independence; institutionalized children, unable to make a gradual transition from dependence to independence, were hurled abruptly and without preparation into the world; once on their own, ex-inmates knew nothing of money or worldly skills acquired by most children in families; they lacked a network of local friends and acquaintances to help launch them on careers; and, to many commentators, most sadly, their emotional development had been stunted by a lack of affection in childhood.”); GITTENS, *supra* note 57, at 33 (“The notion of placing children in families and the belief that normal family life was a far healthier situation than institutions was firmly entrenched in child welfare thinking by the end of the century.”).

Progressive child-savers came to believe that home placements—whether in adoptive homes, foster homes, or work homes—were better for children than retention in children's institutions.⁶⁷ Accordingly, child-savers began to found child-placing and home-finding agencies, including the Children's Home Society, the Children's Home Finding Society, and the Boys and Girls Aid Society of San Francisco, which provided for four kinds of child placements, including legal adoption. Children could be placed:

- (a) [u]ntil sixteen years of age, with board, clothes, and regular schooling;
- (b) until eighteen, with above conditions plus \$100, payable in four equal installments—school attendance may cease at sixteen;
- (c) by adoption, all legal expenses to be borne by applicant; [or]
- (d) on ordinary service at regular wages.⁶⁸

The Boys and Girls Aid Society required applicants for a child (whether interested in adoption or another form of home placement) to respond in writing to 15 questions or requests for information, including the following:

State age of boy or girl [that you want to adopt or place];

What work do you wish him or her to do?;

Will it be convenient for you to send a child to church or Sunday-school every Sunday or once a month?;

Do you want the boy or girl to eat with the family, or with servants or employees?;

Would you prefer an easy-going, though somewhat dull child, or one who is intelligent, full of animal life, and more difficult to control?; [and]

Are you willing to exercise a great degree of patience and undergo some annoyance, especially at the first, and give some personal attention to the training of the boy or girl?⁶⁹

The application closed with two requests and a promise to provide an appropriate child as soon as possible:

Will you kindly answer all these questions as frankly and as fully as you can, so that we may form a fair idea of you and of the sort of child we should select for you? Please inclose [sic] with your answer money to pay the fare. We will send, upon receipt of your reply to these questions, the best we can, if we have one at all suitable in our Home; if not, we will send one as soon thereafter as possible⁷⁰

Despite the child-savers' emerging preference for home placements, records from the period suggest that relatively few dependent children found adoptive homes. In fact, many more children remained in institutions than were placed in any kind of family home. In fiscal year 1904, 7,282 dependent children in California received state aid;⁷¹ 4,875 of them

67. *Id.*

68. THIRTY-SECOND ANNUAL REPORT OF THE BOYS AND GIRLS AID SOCIETY 34 (1906).

69. *Id.* (emphasis in original)

70. *Id.*

71. In 1855, California began funneling state aid for dependent children through institutions. STATUTES OF CALIFORNIA, Ch. 148, § 1 (1855). A California Supreme Court decision in 1888 held that state grants could be made not only to the orphanages themselves but also to the counties for distribution to dependent children not in orphanages. *Yolo v. Dunn*, 77 Cal. 133 (1888).

(66.9%) lived in orphanages rather than private homes.⁷² The following year, the number of dependent children receiving aid increased (to 7,301), as did the percentage residing in institutions (to 72.4%).⁷³

Local orphanage reports confirm these statewide statistics. In 1893, for instance, the Maria Kip Orphanage⁷⁴ cared for 91 children. Seventy-three remained in the orphanage at the end of the year.⁷⁵ In 1900, the Ladies Protection and Relief Society⁷⁶ cared for 390 children. Of these children, 11 were placed in homes, two were placed in other institutions, and 216 remained in the Relief Society home.⁷⁷ In 1904, two institutions that housed children later adopted by Alameda County residents—the Beulah Orphanage⁷⁸ and West Oakland Home⁷⁹—saw the number of residents in their homes remain constant throughout the year.⁸⁰

A majority of the children adopted by the family creators in our study spent at least part of their lives under the care of one or more of these child-saving institutions. Some were abandoned at foundling hospitals or asylums; others landed in orphanages; still others found their way to child-placing agencies. A dozen of the children in our study were housed at the West Oakland Home alone.⁸¹ One infant, known only as

72. CAHN & BARY, *supra* note 66, at 18.

73. *Id.* at 13. Gittens reported similar difficulties in the Chicago area shortly after the turn of the century. See GITTENS, *supra* note 57, at 40 ("One of the concerns voiced frequently in regard to the care of dependent children was that despite the general consensus that a family setting was the best situation for children; in fact many children were still being placed in institutions rather than being helped in their own homes or placed in foster families.").

74. "That the purposes for which it is formed are to take under its care and charge orphans, half-orphans, destitute and friendless children, and provide them with a home, sustenance and education during the period of their dependence . . ." *Articles of Incorporation*, FOURTH ANNUAL REPORT OF THE MARIA KIP ORPHANAGE 13 (1894).

75. *Annual Report of the Secretary*, FOURTH ANNUAL REPORT OF THE MARIA KIP ORPHANAGE 3 (1894).

76. "The object of this Society shall be to render protection and assistance to strangers, and to dependent and destitute women and children." *By-Laws of the San Francisco Ladies Protection and Relief Society*, FORTY-SEVENTH ANNUAL REPORT OF THE MANAGERS OF THE SAN FRANCISCO LADIES PROTECTION AND RELIEF SOCIETY (1901).

77. FORTY-SEVENTH ANNUAL REPORT OF THE MANAGERS OF THE SAN FRANCISCO LADIES PROTECTION AND RELIEF SOCIETY 7-8 (1901). The other 161 children were returned to their homes.

78. A "Private corporation" for the "[c]are of orphan, half orphan, and abandoned children" was founded in 1895. DEPARTMENT OF COMMERCE & LABOR, U.S. BUREAU OF THE CENSUS, BENEVOLENT INSTITUTIONS 1904 56 (1905).

79. "West Oakland Home was founded in 1887 with the object of aiding and sheltering abandoned and neglected children, orphans, and half-orphans, and children whose parents were found unworthy or unfit to be their custodians." MAX A.X. CLARK, SOCIAL SERVICE ORGANIZATIONS OF OAKLAND, CALIFORNIA 58 (1939).

80. On January 1, 1904, the Beulah Orphanage had 64 residents; by the end of the year, the number had increased to 69 (nearly an eight percent increase). The West Oakland Home began the year with 108 residents and saw its number fall to 99 by the end of the year (slightly more than an eight percent decrease). DEPARTMENT OF COMMERCE & LABOR, U.S. BUREAU OF THE CENSUS, BENEVOLENT INSTITUTIONS 1904 56 (1905).

81. See note 79, *supra*.

"Mary," was left by her mother with a nurse, who turned her over to the West Oakland Home. Before Mary turned two years old, the home was able to find a couple to adopt her in 1895.⁸² Another infant named Mary was also a short-term resident of the West Oakland Home. Prior to this Mary's first birthday, John and Lillie Mason petitioned to adopt her, after the home allowed them to "adopt" her on a trial basis for a three-month period. The Masons' lawyer wrote that "your petitioners have no child of their own, are amply able and willing to provide a good home for one and being satisfied with this one, after a trial of three months, desire to adopt and cloth [sic] it with all the relations of parent and child and treat it in all respects as their own natural offspring."⁸³ The court granted their petition.

Other children in our study were left not in institutions but with friends, acquaintances, and strangers. The local newspapers were littered with articles about children abandoned in this manner. One article appearing in the November 9, 1904 issue of the *San Francisco Chronicle* reported that, "A tiny baby girl, about one month old, well-clothed and securely wrapped in a basket, was left by unknown hands on the doorsteps of J. Reed . . . A note pinned to the clothes of the infant stated that the child was of good parents, but that they were too poor to give it a respectable bringing up."⁸⁴ A similar article appearing in the July 7, 1908 issue of the *Chronicle* reported that, while "strolling along the shore of Lake Merritt a German visitor to Oakland, who was enjoying an after-dinner stroll, stumbled against a newspaper bundle and received the surprise of his life. Staring at him from the folds of the printed pages were the large eyes of a pretty four-weeks-old baby girl."⁸⁵ Still other children were left dependent because of paternal death, divorce, and neglect.

Whether temporarily housed in a child-saving institution, left on a park bench, or rendered dependent for some other reason, these children, if ever legally adopted, were likely to be adopted by "family creators"—married couples, unrelated to them by blood, who sought to adopt because of their desire to create a family.

C. Family Re-Creation

While the modal adoption during the period of our study fell into the family creation category,⁸⁶ stepfather adoptions began to occur with increasing regularity due to rising divorce rates and remarriage. Foretelling a future in which half of all adoptions from 1951 to 1981 would be stepparent adoptions,⁸⁷ *family re-creation* adoptions constituted

82. Docket #11871.50.

83. Docket #18790, Petition.

84. *Baby Girl Abandoned by Unknown Parents*, S.F. CHRON., Nov. 9, 1904, at 16.

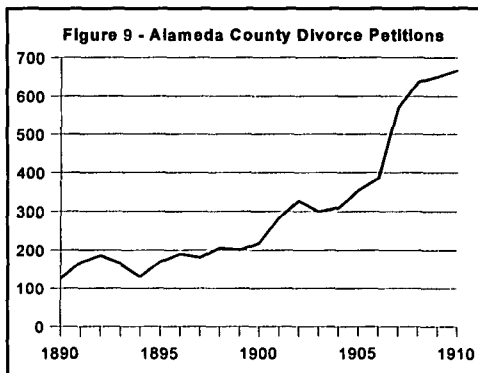
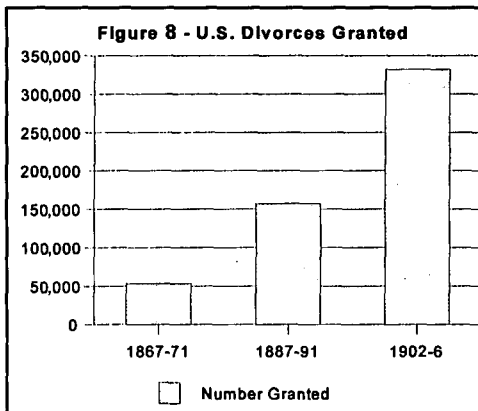
85. *Finds Girl Baby on Shore of Lake*, S.F. CHRON., July 7, 1908, at 5.

86. See Section II. B., *supra*.

87. HOMER H. CLARK, JR., *THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES* 852 (2d ed. 1988). See also Martha Farnsworth Riche, *The Adoption Story*, AMERICAN DEMOGRAPHICS 42 (March 1986) ("the rise in related adoptions may be due to the increase in the number of remarriages in which the stepparent legally adopts the child of the new spouse.").

nearly 12% of the adoptions in our study.⁸⁸ In these family re-creation adoptions, a stepfather sought to adopt the children who had arrived in his home as a consequence of their mother's remarriage.⁸⁹

The emergence of these family re-creation adoptions coincided with changes in both divorce and child custody. The late nineteenth century was a time when marital turmoil translated into marital dissolution at a much higher rate than it had in the past. A federal study of marriage and divorce found that courts granted 53,574 divorces from 1867 to 1871, 157,324 divorces from 1887 to 1891, and 332,262 divorces from 1902 to 1906. (See Figure 8.)⁹⁰ That the divorce rate was increasing rapidly at the turn of the century was no less true in Alameda County, the site of our adoption study. The number of divorce petitions filed in the county jumped from 125 in 1890 to 688 in 1910. (See Figure 9.) Roughly half of these divorces involved children, and consequently, some assignment of custody.⁹¹ With this increase in the number of divorces—many of which involved parents with children—remarriage⁹² and family



88. See Figure 9, *supra*.

89. Of course, when widows with children remarried, stepfather-stepchildren relationships arose in the early American period as well, though stepfathers generally did not "adopt" their stepchildren. Indeed, "the stepfather stood in an uncertain legal position with regard to his stepchild." MASON, *supra* note 6, at 21.

90. JAMES P. LICHTENBERGER, *DIVORCE: A STUDY IN SOCIAL CAUSATION* 11 (1909) (quoting CARROLL D. WRIGHT, *A REPORT ON MARRIAGE AND DIVORCE IN THE UNITED STATES 1867-86* and U.S. CENSUS BUREAU, *A SPECIAL REPORT ON MARRIAGE AND DIVORCE, 1867-1906*).

91. See note 29, *supra*.

92. The right of remarriage was not, however, unrestricted. In 1897, the California legislature modified the divorce laws to disallow remarriage within one year of divorce and thus to "correct a great public evil which had become too rife—to put a stop to marriages within the period allowed for an appeal from the decree of divorce, which might be and sometimes

re-creation adoption became more common.⁹³

The emergence of family re-creation adoption coincided not only with the rapid increase in the rate of divorce but also with the enhancement of women's custody rights. While divorce was quite rare historically, even rarer was the woman, whether divorced *or* widowed, who had legal custody or guardianship over her children to share with a new husband. At common law, husbands had the right to full custody and control of their children, while wives were "entitled to no power, but only to reverence and respect."⁹⁴ Consequently, a mother who had entered into a second marriage would not have been able to employ the legal construct of adoption even if it had been available.

During the progressive era, however, the father's apparent absolute right to custody gave way to emerging maternal custody rights.⁹⁵ This decrease in paternal custody rights and concomitant increase in

had been reversed, with great scandal to the parties who had married again." See GEORGE ELLIOTT HOWARD, A HISTORY OF MATRIMONIAL INSTITUTIONS 150 (1904) (quoting Judge Belher in *Abbie Rose Wood v. Estate of Joseph M. Wood*, filed in the Superior Court of San Francisco, June 14, 1900).

93. Additionally, family re-creation adoption was made more likely by a feature of the California family code during this period. Adoption petitioners normally had to obtain the consent of both of the adoptee's natural parents to obtain an adoption, see CAL. CIV. CODE § 224 (Hart 1892), but the statute waived this requirement if the adoptee's parents had divorced on the basis of certain grounds, including "cruelty" or "adultery." CAL. CIV. CODE § 224 provided that "a legitimate child cannot be adopted without the consent of its parents, if living . . . except that consent is not necessary from a father or mother deprived of civil rights or adjudged guilty of adultery or of cruelty, and for either cause divorced." See also MASON, *supra* note 6, at 74-75.

Apparently the courts enforced this waiver, as Edward Younger discovered the hard way. After Edward's wife divorced him on grounds of cruelty and obtained custody of their child, she petitioned to allow her father to adopt their child. Edward petitioned to modify the court's earlier custody award in light of the fact that his ex-wife no longer wanted custody of the child. The court, however, citing the statutory provision waiving consent of the parent "guilty" of cruelty in divorce, concluded that it could not entertain Edward's claim because "[b]y the adoption proceeding . . . the status of the child was wholly changed; it became *ipso facto* the child of another, and ceased to sustain that relation, in a legal sense, to its natural parents." Younger, 106 Cal. at 379.

More than 40% of Alameda County spouses who petitioned for divorce during the period of our study did so on the basis of cruelty or adultery. Data on file with the authors. See also ELAINE TYLER MAY, GREAT EXPECTATIONS: MARRIAGE AND DIVORCE IN POST-VICTORIAN AMERICA 175 (1980) (finding that 35% of 1880s Los Angeles divorce petitioners asserted "extreme cruelty" and nine percent "adultery" as the "primary legal ground" upon which their divorce petition was based). See generally ROBERT C. GRISWOLD, FAMILY AND DIVORCE IN CALIFORNIA, 1850-1890 (1982).

94. WILLIAM BLACKSTONE, 2 BLACKSTONE'S COMMENTARIES ON THE LAWS OF ENGLAND 452 452 (George Sharwood ed., 1860); GROSSBERG, *supra* note 4, at 234-37.

95. As Michael Grossberg explains, the combination of many anti-patriarchal forces converged in this era to shift away from unmitigated paternal custody rights to a standard more focused on the best interests of children. GROSSBERG, *supra* note 4, at 236-37. This shift was effected, Grossberg explains, using three innovations: "the use of child nurture to circumscribe paternal custody rights and expand maternal ones; the reliance on the interests of the children to increase the legal rights of surrogate parents; and the creation through the invention of adoption of an artificial family based on volunteerism, not blood." *Id.*

maternal custody rights reflected the successes of early advocates for equal custody rights⁹⁶ as well as the emergence of a new ethic regarding the significance of the maternal role.⁹⁷

These societal changes in divorce and maternal custody rights combined to produce, during the period of our study, the initial trickle⁹⁸ of what would eventually become a flood of family re-creation adoptions. For these stepfather petitioners and their new brides, adoption served to re-create families previously disrupted by death or divorce.

CONCLUSION

The enactment of the adoption statutes was “an historic moment”⁹⁹ and a “far-reaching innovation”¹⁰⁰ because the statutes expanded the legal definition of family to include parent-child relationships based on contract. By giving parties the freedom to contract for children, the adoption statutes made a variety of parent-child relationships *legally* possible. Not surprisingly, our examination of the Alameda County court records reveals that parties used these statutes to form distinct types of parent-child relationships, each of which reflected the differing needs of the adopters, the natural parents, and perhaps even the adoptees. By allowing a grandmother to adopt her orphaned grandchild, the adoption statutes made family preservation possible. By allowing a childless couple to adopt an abandoned infant, the adoption statutes made family creation possible. And by allowing a stepfather to adopt his new bride’s older child, the adoption statutes made family re-creation possible. Whether family preservation, creation, or re-creation, the innovation of the adoption statutes was to make parent-child relationships possible where blood could not.

96. As early as the Seneca Falls Convention in 1848, the burgeoning women’s rights movement publicly demanded equal custody and guardianship rights for women. As part of the “history of repeated injuries and usurpations on the part of man toward woman,” the convention’s Declaration of Sentiments included the following: “He has so framed the laws of divorce, as to what shall be the proper causes, and in case of separation, to whom the guardianship of the children shall be given, as to be wholly regardless of the happiness of women—the law, in all cases, going upon a false supposition of the supremacy of man, and giving all power into his hands.” 1 HISTORY OF WOMAN SUFFRAGE 71-72 (Elizabeth Cady Stanton, Susan B. Anthony & Matilda Joslyn Gage eds. 1881). In reparation for this, the Declaration demanded that women “have immediate admission to all the rights and privileges which belong to them as citizens of the United States.” *Id.*

97. This new ethic of placing “emphasis . . . on the role of the mother in raising children” in the nineteenth century is often referred to as the “cult of motherhood.” Mason, *supra* note 6, at 51.

98. See, e.g., Docket #19100 (reporting that Lydia Perkins divorced Frank Perkins and then married William Fogg, who proceeded to adopt her 12-year-old son, Harold); Docket #19528 (reporting that E.A. Chappell petitioned to adopt his new wife’s 10-year-old daughter from her previous marriage).

99. See note 3, *supra*.

100. See note 4, *supra*.