

since no statute explicitly forbade it. And yet the omission which accidentally resulted from the concern of the dry delegates over city ordinances liberalizing the liquor laws in the present case permits the court to invalidate a city ordinance which imposes an additional restriction on the liquor trade.

Finally, considerations of policy make the California rule preferable.³⁰ The sale of liquor may result in problems varying with each city and town. Where liquor is sold during the early morning hours a larger police force may be necessary. The added expense, coupled with the increased criminality which may accompany later closing hours, may lead a municipality to prescribe earlier closing hours. Furthermore, community attitudes toward the sale of liquor differ, not only because of the personal views of individuals, but because of the character, size and compactness of the community. It was because the state legislatures could not appreciate the peculiar needs of each municipality that home rule was granted. The principal case, in limiting the scope of the grant, is inconsistent with the end sought by home rule constitutional provisions. It leads to the anomalous result that cities in some states without home rule are in fact accorded more power in police matters than the cities of Ohio.³¹

Parent and Child—Adoption—Parent's Consent Unnecessary—[Maryland].— A mother and her second husband petitioned in Maryland for a decree of adoption of her infant child. The adoption was opposed by the child's natural father, from whom, in 1937, the mother had obtained a divorce on grounds of desertion. In 1938, after petitioners were married, the natural father instituted proceedings for custody and was given permission to have the child on alternate Sundays. However, the natural father did not see the child before and has not seen the child since the custody award. The boy is fully supported by the stepfather and uses his name. On appeal from a decree of adoption, *held*, decree affirmed, two judges dissenting. *Adoption of Lagumis*.²

In contrast to the typical American adoption statute, the Maryland statute does not in terms require the consent of the natural parents.² While both the

³⁰ As to the other two states that have a constitutional provision for municipal police power, Idaho, it seems, has not yet been faced with the problem here discussed. The Supreme Court of Washington has stated that the right of a city to exercise the police power over a particular subject matter ceases when the state acts, unless there is room for the exercise of concurrent jurisdiction. *Seattle Electric Co. v. Seattle*, 78 Wash. 203, 138 Pac. 892 (1914). But whether there is room for such exercise depends in turn on the court's determination of the legislative intent. Thus, neither has the Washington court indicated which rule of construction it will adopt.

³¹ In *Michell v. City of Birmingham*, 222 Ala. 389, 133 So. 13 (1931), an ordinance prohibiting the practice of fortune-telling or palmistry for reward was held valid, though a general law provided for licensing of fortune-telling. There is no home rule provision in Alabama.

² 46 A. 2d 189 (Md., 1946).

² "The several equity courts of this state, upon the application of any person residing in the city or county where such application is made, or the equity court in the city or county where a person to be adopted resides, shall have power to pass a decree declaring any person the

majority and dissent use the statutory standard of the welfare of the child, they differ as to the weight to be accorded the rights of the natural father. The majority held that under the Maryland statute the adoption can be decreed over the father's objection if it is justified by the welfare of the child. Such justification was held to exist because, if the adoption is granted, the boy will remain with his natural mother and with the only father he has ever known in the home and environment to which he is accustomed; while, on the other hand, the neglect of the natural father had practically destroyed the tie between him and the child. The minority, on the other hand, argued that such drastic action should be taken over the objection of the father only in those exceptional cases where it is imperative for the welfare of the child. That it would be best for the boy to be reared by the mother and stepfather was said to justify a custody award, but not an adoption.

Under Maryland law, an adoption decree results in a complete severance of the legal relationship between the natural father and the child.³ The father loses his rights of custody, services, earnings, and control of the child.⁴ The child now owes these duties to the adoptive parents,⁵ and they assume the obligations

adopted child of the petitioner, upon such reasonable notice to the parent or parents, guardian or guardians, of such child, if any there be, where a child is to be adopted . . . as the court may order to be given, provided that the court passing the decree shall become satisfied, upon careful investigation, . . . that the best interests and welfare of such child will be thereby promoted, and provided further that the child, if of sufficient intelligence and capacity to give an understanding assent, . . . shall so desire." Md. Ann. Code (Flack, 1939) Art. 16, § 78. Three other states have similar provisions dispensing with the necessity of parental consent. Florida, Fla. Comp. Gen. Laws Ann. (Skillman, 1927) §§ 5078-80; South Carolina, S.C. Code of Laws (1942) § 255(19); Tennessee, Tenn. Code Ann. (Michie, 1938) § 4733. The trend has been away from statutes of the Maryland type and toward requiring consent of the natural parents.

³ "The effect of such decree of adoption shall be to entitle the child so adopted to the same rights of inheritance and distribution as to the petitioner's estate, and the same rights of protection, education, and maintenance as if born to such petitioner in lawful wedlock, and the natural parents of such child shall be freed from all legal obligation towards it. . . ." Md. Ann. Code (Flack, 1939) Art. 16, § 81. Although this section indicates that all reciprocal intestate inheritance rights are severed by the adoption decree, it does not specifically solve all inheritance problems. Strahorn, *Adoption in Maryland*, 7 Md. L. Rev. 275, 314 (1943). Statutes of other states also fail to provide specifically for the many inheritance problems that might result after an adoption has been effected. ⁴ Vernier, *American Family Laws* 411 (1936). In this work the statute sections dealing with the effect of adoption on inheritance rights are tabulated. *Ibid.*, at 416-51.

⁴ A clause, in an adoption decree, giving the natural parents the right occasionally to see the child, has been held invalid. *Spencer v. Franks*, 173 Md. 73, 195 Atl. 306 (1937). Some other statutes, however, do not provide for such a complete severance of the legal relationships, leaving some residual rights and duties to both the natural parent and the child, 4 Vernier, *American Family Laws* 406 (1936).

⁵ Md. Ann. Code (Flack, 1939) Art. 16, § 81; Strahorn, *op. cit. supra* note 3, at 310; see *Victory Sparkler Co. v. Gilbert*, 160 Md. 181, 153 Atl. 275 (1931), a workmen's compensation

of support, maintenance and education. The new status of the child and the adopting parents will be protected to the same extent as a blood relationship.⁶ Adoption, unlike custody, is not meant to deal with a temporary situation but produces a final and complete termination of parental rights and duties.⁷ Thus, in spite of the absence of the consent requirement in the statute, the Maryland courts have shown some reluctance to decree adoption over the objection of the natural parents.⁸

The requirement of consent has its basis in the historically founded notion that adoption is a contract for the transfer of the child from the natural parents to the adopting ones.⁹ Maryland, rather than employing this concept, has introduced into its adoption statute the element of remedying abuses of parental power, which has traditionally been achieved by the state's power of parens

case which held that the adoptive mother was the "mother" under the act and entitled to compensation.

⁶ In a case where the natural mother, who had consented to the adoption, later attempted to have the decree annulled, the court held that a change in the attitude or circumstances of the mother did not warrant the rescission of the adoption decree. *Backus v. Reynolds*, 159 Md. 601, 152 Atl. 109 (1930). However, the court may readjust the custody against the adopting parents if the welfare of the child so demands. *Ibid.*, at 604. The revocation of the adoption against the wishes of the adopting parents can be accomplished only by instituting new adoption proceedings. *Strahorn, op. cit. supra* note 3, at 301.

⁷ In custody proceedings the care and control of the child is awarded. The only consideration, therefore, is the best interest and welfare of the child. Md. Ann. Code (Flack, 1939) Art. 16, § 85. Custody may be awarded to petitioners, whereas adoption might be refused. *Connelly v. Jones*, 165 Md. 544, 170 Atl. 174 (1933). Furthermore, a "permanent custody" award cannot be made. Adoption should be decreed if the judgment is meant to be permanent. *Alston v. Thomas*, 161 Md. 617, 158 Atl. 24 (1931). Although adoption and custody serve different purposes and have different effects on legal status, the Maryland statute seems to provide for the same standard in both proceedings. Md. Ann. Code (Flack, 1939) Art. 16, §§ 78 and 85.

⁸ The Maryland court refused to allow the great aunt to adopt a child over the objection of the natural father, even though the child had lived with and been entirely supported by petitioner. *Connelly v. Jones*, 165 Md. 544, 170 Atl. 174 (1933). The court said, "The statutory provisions for adoption of children themselves contain no reference to the natural rights of the parents, but it requires no argument to support the implication that the laws do not mean to deprive parents of their own children, except under extraordinary conditions, such as do not exist in this case." *Ibid.*, at 546. But where the father had abandoned the child with the result that he became a public charge and was given to petitioners to rear as their own, adoption was decreed. *Alston v. Thomas*, 161 Md. 617, 158 Atl. 24 (1931). "Having forfeited the confidence of the court by his conduct, the sincerity of the claim of the father is not clear, and it is imperative that the welfare of the child rather than any paternal right must be the controlling factor." *Ibid.*, at 620.

⁹ For a good discussion of the background of adoption under the theory and practice of ancient law see *Bosman, The Law of Adoption*, 22 Col. L. Rev. 332 (1922). Until very recently parents could transfer their children by a deed certified and filed as in a property gift or sale. *Abbott, Adoption*, 1 *Encyc. Soc. Sci.* 461 (1930). The development, however, has been from a transaction of a contractual character toward a procedure which considers human values and recognizes the supervisory duty of the state. *Breckinridge, The Family and the State* 357, 361 (1934).

patriae²⁰ and enforced in proceedings different from the adoption proceedings.²¹ This combination appears to be unfortunate.

Generally it is better for a child to remain with his natural parents as long as they wish to have him and do not abuse their powers. Even where temporary measures may be justified, a permanent change in legal status, although it may produce material advantages for the child, has intangible effects which are difficult to measure and foresee.²² Emotional attachments are not so easily severed as legal ties.

The requirement of parental consent also provides a safeguard to the adopting parents. Generally it is their interests which have been given the least attention by state legislatures.²³ The possibility of future interferences with the new security of the adoptive parents and the child are greatly reduced when the natural parents have willingly relinquished their rights.²⁴

Moreover, the political implications of allowing a child to be taken from his parents without their consent are disturbing. The state might establish standards of race, religion or education which, if not met by the parents, might justify taking the child. Such extreme disregard of parental rights has in recent years occurred in other countries.²⁵ Even though some seemingly beneficial adoptions might be thwarted by the necessity of obtaining the consent of the natural

²⁰ In the English legal tradition, the state, through chancery, could invade the sacred area of parental rights in order to fulfill the king's duty of guarding the interests of infants and dependents. A parent had no vested rights in the child that the state, as *parens patriae*, could not interfere with. Breckinridge, *The Family and the State*, 360 (1934). However, when the court of chancery asserted its authority it did not do so by virtue of the rights of adoptive parents but in the interests of the child. Bosman, *The Law of Adoption*, 22 Col. L. Rev. 332, 335 (1922).

²¹ The abuse of parental powers generally became the issue in habeas corpus proceedings in the law courts, or by petition to the chancellors to exercise the prerogative of the crown as *parens patriae*, to dispose of the custody of the child. Finlay v. Finlay, 240 N.Y. 429, 148 N.E. 624 (1925).

²² For a discussion of the emotional problems resulting from adoption, see Gallagher, *The Adopted Child* (1936). Some children are temperamentally not suited for adoption, and strongly and persistently resist the substitution of foster parents for their own. Theis and Goodrich, *The Child in the Foster Home* 118 (1921). The authors discuss the problems of both the child and the adoptive parents.

²³ While many statutes recognize the interests of the natural parents and of the child, only few require an investigation of the child's antecedents or of his mental or physical condition as a protection to the foster parents. 4 Vernier, *American Family Laws* 297 (1936). Alabama provides for an interlocutory decree to become final only after child has lived with petitioner for one year. Ala. Code Ann. (Michie, 1940) tit. 27, § 4. This gives both the petitioners and child a trial period.

²⁴ In refusing to annul adoption decrees courts have emphasized the fact that the natural parents willingly gave up their child. *Hurley v. Martin*, 283 Mass. 415, 186 N.E. 596 (1933); *Lorre v. Pippin*, 110 W. Va. 357, 158 S.E. 673 (1931); *State v. Keeley*, 32 S.D. 526, 143 N.W. 953 (1913); *Stickles v. Reichart*, 203 Wis. 579, 234 N.W. 728 (1931).

²⁵ For example, membership in the Hitler Youth was made compulsory in Germany in 1936, regardless of parental wishes. Neumann, *Behemoth* 71 (1942). For an excellent account of how the state took over complete control of the education of the German children, see Mann, *School for Barbarians* (1938).

parents, there may be potential danger in making the child's welfare, as determined by a state agency, the only consideration in deciding adoption issues.

Only where a court has already deprived a parent of custody or guardianship, his consent is and should not be required.¹⁶ In the instant case, the father may well be regarded as having forfeited his rights.¹⁷ Thus, the outcome of the principal case would probably have been the same had it arisen in Illinois or some other state requiring consent.¹⁸

SEC—Registration of Securities—Failure to Register Resulting in Penal Action against Broker Redistributing for Person Controlling Issuer—[Federal].—The respondent, a broker-dealer using the medium of the New York Stock Exchange, sold a substantial number of shares for a person controlling the issuer. Although the shares were registered under the Securities Exchange Act of 1934, there was no registration statement in effect under the Securities Act of 1933 as the issue had originally been distributed prior to the 1933 act. The SEC, proceeding under authority granted by the 1934 act¹ to penalize brokers who have wilfully violated the Securities Act of 1933, ruled that the respondent's transactions were not within the exemptions of the 1933 act, and that the respondent was therefore acting as an underwriter within the terms of the act and should have

¹⁶ Ala. Code Ann. (Michie, 1940) tit. 27, § 3. Generally, the termination of parental rights should be decided in separate proceedings and should not become an issue in the adoption action. The conflict between such rights and the welfare of the child is a separate issue from the adoption itself. Many states provide for such termination in custody or guardianship proceedings in a juvenile court on recommendation of a social or administrative agency. Courts specializing in human relationships or domestic problems are more competent to deal with the various factors determining parental qualifications. Such determinations should be made only after a complete investigation by a worker trained in evaluating the importance of natural parents in relation to the welfare of the child.

¹⁷ Even states requiring consent provide for the forfeiture of parental rights where the parent has abandoned, deserted or neglected the child. 4 Vernier, *American Family Laws* 346-93 (1936). In these situations parental rights have been terminated by the actions of the parent. Moreover if the parent has been imprisoned or adjudged insane, is a drug addict or habitual drunkard, his consent to the adoption is not required since he is deemed to be unfit to fulfill his obligations. *Ibid.*

¹⁸ *Baker v. Strahorn*, 33 Ill. App. 59 (1889). The court allowed the grandparents to adopt their grandchild over the objection of the father. The mother had obtained a divorce on grounds of desertion and had been awarded custody. The court indicated that the welfare of the child is of prime importance, and caprice, obstinacy or opposition on the part of the non-consenting parent should not be regarded. *Ibid.*, at 60. Nims, *The Illinois Adoption Law and Its Administration* (1928). The Illinois rule is not changed in this respect by the new adoption statute. Ill. Ann. Stat. (Smith-Hurd, Supp. 1945) C. 4, § 4-1.

¹ Section 15 (b) of the Securities Exchange Act of 1934 empowers the Commission to revoke the registration of any broker who has wilfully violated any provision of the Securities Act of 1933. 48 Stat. 895 (1934), as amended, 15 U.S.C.A. § 780 (b) (1941). Section 15 A (1) (2) authorizes the Commission to suspend for a period not exceeding twelve months or to expel from a registered securities association any member thereof who has wilfully violated any provision of the Securities Act. 48 Stat. 881 (1934), as amended, 15 U.S.C.A. § 780-3 (1) (2) (1941).