

REVOCATION OF PARENTAL CONSENT TO ADOPTION:  
LEGAL DOCTRINE AND SOCIAL POLICY

Each year over 100,000 adoption petitions are granted.<sup>1</sup> These decrees literally create the relationship of parent and child, a relationship fundamental to society. Clearly, questions of adoption law are of great legal and social significance. One such question concerns the power of natural parents to revoke a valid consent to adoption prior to the final adoption decree. This comment will survey the law on revocation and evaluate it in the light of relevant sociological and social work materials.<sup>2</sup>

For a legal adoption every jurisdiction in most circumstances requires the consent of the natural parents.<sup>3</sup> Yet consent and its revocation are the elements of adoption law which cause the most confusion and raise the most problems.<sup>4</sup> There appear to be no published statistics on the frequency of attempted revocation. The Los Angeles County Bureau of Adoptions reports five such attempts in 1,806 consents taken in one year.<sup>5</sup> Other agencies estimate the rate at somewhat less than one per cent.<sup>6</sup> There is reason to believe, however, that for private, non-agency adoptions the rate may be much higher. The Massachusetts Department of Public Welfare estimates attempted revocation occurs in as many as ten per cent of these cases.<sup>7</sup> The significance of this variance will be discussed below.

It has ordinarily been said that there are three different rules concerning revocation of consent. (1) Consent is absolutely revocable until the final decree. (2) Revocation will be allowed at the discretion of the court. (3) In the absence of fraud or duress consent is final. It has also been asserted that the first rule, absolute right of revocation, is the majority position.<sup>8</sup> A survey

<sup>1</sup> In 1959 102,000 adoption petitions were granted. U.S. CHILDREN'S BUREAU, CHILD WELFARE STATISTICS 1959 at 25 (Statistical Ser. No. 60, 1960).

<sup>2</sup> Attacks on the final adoption decree will not be considered. For a treatment of this question see Note, *Attacks on Adoption Decrees by Natural Parents to Regain Custody*, 61 YALE L.J. 591 (1952).

<sup>3</sup> 4 VERNIER, AMERICAN FAMILY LAWS §§ 257, 259 (1936); MADDEN, PERSONS AND DOMESTIC RELATIONS 357; 2 C.J.S. *Adoption* § 21(a)(1) (1936). If the child is illegitimate, the consent of the mother only is usually required. 2 C.J.S. *Adoption* § 21(c) (1936). The most common exception to the requirement of parental consent is abandonment. For a complete catalogue of such exceptions, see Comment, 24 ROCKY MT. L. REV. 359, 361 (1952).

<sup>4</sup> CLARKE, SOCIAL LEGISLATION 318 (2d ed. 1957); 1 SHAPIRO, A STUDY OF ADOPTION PRACTICE 94 (1956); YOUNG, OUT OF WEDLOCK 163 (1954).

<sup>5</sup> Letter from the Los Angeles County Bureau of Adoptions to *The University of Chicago Law Review*, Jan. 16, 1961, on file in The University of Chicago Law Library. (All letters hereinafter cited are on file in The University of Chicago Law Library.)

<sup>6</sup> Letters from various adoption agencies to *The University of Chicago Law Review*.

<sup>7</sup> Letter from the Massachusetts Department of Public Welfare to *The University of Chicago Law Review*, Jan 13, 1961.

<sup>8</sup> Annot., 138 A.L.R. 1038 (1942); 2 C.J.S. *Adoption* § 21(a)(4); Note, 9 VAND. L. REV. 396-97 (1956). A trend toward the discretionary rule is noted in Annot., 156 A.L.R. 1011 (1945).

of current law, however, discloses that the second rule, revocation at the discretion of the court, now has the most adherents. Furthermore, although the three general rules state the law correctly, there are definite subpositions under each rule; the principal variable is the time at which consent becomes irrevocable or revocable only with court permission.

Fifteen jurisdictions give the natural parent or parents an absolute right to revoke consent. In nine of these the right is continuous until the final decree.<sup>9</sup> In Arkansas, Ohio, and Tennessee it continues until the interlocutory order.<sup>10</sup> Arizona and Hawaii terminate the right after the child is placed in the prospective adoptive home; thereafter they follow the discretionary rule.<sup>11</sup> North Carolina does not allow revocation after the interlocutory decree, or in any event after six months.<sup>12</sup>

Twenty-five jurisdictions adhere in whole or in part to the rule placing the right of revocation within the discretion of the court. In fifteen of these the rule obtains until the final decree.<sup>13</sup> In three jurisdictions, District of Colum-

<sup>9</sup> Kansas—*In re Thompson's Adoption*, 178 Kan. 127, 283 P.2d 493 (1955); Louisiana—*In re Harville*, 233 La. 2, 96 So. 2d 20 (1957); *Green v. Paul*, 212 La. 338, 31 So. 2d 819 (1957) (*But see* LA. REV. STAT. § 9:431, as amended, Acts 1960, No. 268 § 3, which may have enacted the discretion or no revocation position.); Michigan—*In re White's Adoption*, 300 Mich. 378, 1 N.W.2d 579 (1942); Minnesota—*In re Anderson*, 189 Minn. 85, 248 N.W. 657 (1933) (decided on an apparent misreading of *State v. Beardsley*, 149 Minn. 435, 183 N.W. 956 (1921)); Mississippi—*Mayfield v. Braund*, 217 Miss. 514, 64 So. 2d 713 (1953) (Although the court can grant adoption over parental objection if the parent is morally unfit, this would seem to be a condition for dispensing with consent, not a derogation of the absolute right to revoke.); Pennsylvania—*In re Stone's Adoption*, 398 Pa. 190, 156 A.2d 808 (1959); South Dakota—S.D. CODE tit. 14, § 14.0406 (1939) (Parents must consent at the hearing; consent before then is of no effect, hence obviously revocable.); Texas—*Catholic Charities v. Harper*, 337 S.W.2d 111 (Tex. 1960); Washington—*In re Nelms*, 153 Wash. 242, 279 Pac. 748 (1929). The statutes cited in this and the following thirteen footnotes are those which deal expressly with revocation of consent.

<sup>10</sup> *Martin v. Ford*, 224 Ark. 993, 277 S.W.2d 842 (1955); *Kozak v. Lutheran Children's Aid Soc'y*, 164 Ohio St. 335, 130 N.E.2d 796 (1955) (dictum), OHIO REV. CODE tit. 31, § 3107.06 (1953); TENN. CODE ANN. tit. 36, § 117 (1956).

<sup>11</sup> *In re Holman's Adoption*, 80 Ariz. 201, 295 P.2d 372 (1956); HAWAII REV. LAWS ch. 331, § 331-2 (1955).

<sup>12</sup> *In re Hoose's Adoption*, 243 N.C. 589, 91 S.E.2d 555 (1956); N.C. GEN. STAT. ch. 48, § 48-11 (1959 Supp.).

<sup>13</sup> California—*Adoption of Pitcher*, 103 Cal. App. 2d 859, 230 P.2d 449 (1951), CAL. CIVIL CODE tit. 2, ch. 2, § 226a (1960); Connecticut—*Bailey v. Mars*, 138 Conn. 593, 87 A.2d 388 (1952); Georgia—*Hendrix v. Hunter*, 99 Ga. App. 785, 110 S.E.2d 35 (1959), GA. CODE ANN. tit. 74, § 74-403 (1958 Supp.); Iowa—*Re Adoption of Cannon*, 243 Iowa 828, 53 N.W.2d 877 (1952); Kentucky—*Welsh v. Young*, 240 S.W.2d 584 (Ky. Ct. of App. 1951); Maryland—*King v. Shandrowski*, 218 Md. 38, 145 A.2d 281 (1958) (MD. ANN. CODE art. 16, § 74 makes consent revocable at any time, but the same section grants the court discretion to decree adoption without parental consent if in the best interests of the child. Thus, a discretionary rule results.); Massachusetts—*In re Adoption of Minor*, 338 Mass. 635, 156 N.E.2d 801 (1959); Missouri—*In re G.K.D.*, 332 S.W.2d 62 (Mo. Ct. App. 1960), VERN. ANN. MO. STAT. tit. 30, § 453.050(2) (1952); New Hampshire—*Durivage v. Vincent*, 102 N.H. 481, 161 A.2d 175 (1960); New Jersey—*In re Adoption of Child by*

bia, Indiana, and Nevada, the courts apparently consider consent absolutely irrevocable. But when the courts rule on an adoption petition they consider all factors, including the natural parents' desire to reassert their rights to the child, and they decree the adoption or deny it according to the best interests of the child. These jurisdictions thus follow a discretionary rule for all practical purposes.<sup>14</sup> Arkansas follows the discretionary rule after the interlocutory order.<sup>15</sup> As noted above, Arizona and Hawaii allow revocation with court permission after placement.<sup>16</sup> Montana, Wisconsin, and Oklahoma adhere to the discretionary rule until the interlocutory order.<sup>17</sup> In Delaware the parents can ask for judicial permission to revoke consent within sixty days of the filing of the adoption petition.<sup>18</sup>

Nine jurisdictions make consent absolutely irrevocable from the date of its execution or some later date. Only two of these, Florida and Illinois, hold consent irrevocable from its execution.<sup>19</sup> Five jurisdictions absolutely foreclose the right to revoke after the interlocutory decree.<sup>20</sup> As noted above North Carolina allows no revocation after the interlocutory decree or a six month period.<sup>21</sup> In Delaware the right to ask for revocation expires sixty days after the adoption petition is filed.<sup>22</sup>

Because the New York decisions are in conflict, no rule can definitely be assigned to that state. The highest New York court to consider the question

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S, 57 N.J. Super. 154, 154 A.2d 129 (1959); New Mexico—*Borwin v. Reidy*, 62 N.M. 183, 307 P.2d 175 (1957); Oregon—*In re Adoption of Laules*, 216 Ore. 188, 338 P.2d 660 (1959); South Carolina—*Driggers v. Jolley*, 219 S.C. 31, 64 S.E.2d 19 (1951); Utah—*Miller v. Miller*, 8 Utah 2d 290, 333 P.2d 945 (1959) (*semble*); West Virginia—*Lane v. Pippin*, 110 W.Va. 357, 158 S.E. 673 (1931) (*dictum*).

<sup>14</sup> *In re Adoption of A Minor*, 127 F. Supp. 256 (D.D.C. 1954); *In re Adoption of A Minor*, 144 F.2d 644 (D.C. Cir. 1944); *Rhodes v. Shirley*, 234 Ind. 587, 129 N.E.2d 60 (1955); *Ex parte Schultz*, 64 Nev. 264, 181 P.2d 585 (1947).

<sup>15</sup> *Martin v. Ford*, 224 Ark. 993, 277 S.W.2d 842 (1955).

<sup>16</sup> *In re Holman's Adoption*, 80 Ariz. 201, 295 P.2d 372 (1956); HAWAII REV. LAWS ch. 331, § 331-2 (1955).

<sup>17</sup> MONT. REV. CODES tit. 61, § 206 (1959 Supp.); OKLA. STAT. ANN. tit. 10, § 60.10 (1960 Supp.); WISC. STAT. ANN. tit. 7, ch. 48, § 48.86 (1957). These three statutes enact § 6 of the UNIFORM ADOPTION ACT.

<sup>18</sup> *In re Fusco*, 50 Del. 241, 127 A.2d 468 (Orphan's Ct. of Del. 1956); DEL. CODE ANN. tit. 13, ch. 9, sec. 909 (1953).

<sup>19</sup> *Skeen v. Marx*, 105 So. 2d 517 (Fla. Dist. Ct. of App. 1958); *In re Simaner's Petition* 15 Ill.2d 568, 155 N.E.2d 555 (1959); ILL. REV. STAT. ch. 4, § 9.1-11 (1959).

<sup>20</sup> Montana—MONT. REV. CODES tit. 61, § 206 (1959 Supp.); Ohio—*Kozak v. Lutheran Children's Aid Soc'y*, 164 Ohio St. 335, 130 N.E.2d 796 (1955) (*dictum*); OHIO REV. CODE tit. 31, § 3107.06 (1953); Oklahoma—OKLA. STAT. ANN. tit. 10, § 60.10 (1960 Supp.); Tennessee—TENN. CODE ANN. tit. 36, § 117 (1956); Wisconsin—WISC. STAT. ANN. tit. 7, ch. 48, § 48.86 (1957).

<sup>21</sup> See authorities cited note 12 *supra*.

<sup>22</sup> See authorities cited note 18 *supra*.

applied the discretionary rule.<sup>23</sup> The most recent New York case followed the absolute-right-of-revocation rule.<sup>24</sup> The remaining New York decisions apply both rules, and absolute right of revocation seems to be the more prevalent view.<sup>25</sup> Eleven jurisdictions appear to have no case or statute law on the question.<sup>26</sup> England gives an absolute right of revocation.<sup>27</sup>

Some jurisdictions distinguish between consent to adoption and absolute surrender of the custody of the child to an agency, thereby terminating parental rights. These states hold the consent revocable at will or revocable only at the court's discretion, but consider the surrender to an agency absolutely irrevocable.<sup>28</sup>

A revocation in the course of the adoption process is a serious, often tragic event for the adoptive parents, the agency, the child and, quite likely, the revoking natural parents. It is extremely disheartening for adoptive parents who have invested in a child financially and, more important, emotionally to have it taken from them by a natural parent who has previously consented to the adoption.<sup>29</sup> From the viewpoint of the agency a revocation means that its painstaking efforts to find a home and child suitable for one another have gone for naught.<sup>30</sup> Furthermore, revocations discourage prospective adoptive parents. For the child, revocation may mean an abrupt change in environment after the infant has become settled in the adoptive home. Such a change can seriously damage the child's developing personality.<sup>31</sup> Also,

<sup>23</sup> *In re Adoption of Anonymous*, 286 App. Div. 161, 143 N.Y.S.2d 90 (1955), *motion for leave to appeal denied*, 286 App. Div. 968, 146 N.Y.S.2d 477 (1955).

<sup>24</sup> *People v. Anonymous*, 19 Misc. 2d 441, 195 N.Y.S.2d 1009 (Sup. Ct. 1959).

<sup>25</sup> See *In re Van Allen's Adoption*, 9 Misc. 2d 381, 170 N.Y.S.2d 400 (Erie County Ct. 1958); *In re Adoption of Anonymous*, 198 Misc. 185, 101 N.Y.S.2d 93 (Del. County Ct. 1950).

<sup>26</sup> Alabama, Alaska, Colorado, Idaho, Maine, Nebraska, North Dakota, Rhode Island, Vermont, Virginia, and Wyoming. *But cf. Vaughn v. Hubbard*, 38 Idaho 451, 221 Pac. 1107 (1923), which suggests that if presented with the question Idaho would allow an absolute right of revocation on procedural grounds like those established by the South Dakota Statute, S.D. CODE tit. 14, § 14.046 (1939).

<sup>27</sup> *Watson v. Nikolaisen*, [1955] 2 Q.B. 286.

<sup>28</sup> *E.g., In re White's Adoption*, 300 Mich. 378, 1 N.W.2d 579 (1942). Compare *Gonzales v. Toma*, 330 Mich. 35, 46 N.W.2d 453 (1951); *Catholic Charities v. Harper*, 337 S.W.2d 111 (Texas Sup. Ct. 1960).

<sup>29</sup> DOSS, IF YOU ADOPT A CHILD 147 (1957).

<sup>30</sup> Letter from The Catholic Home Bureau, Archdiocese of Chicago to *The University of Chicago Law Review*, Jan. 12, 1961.

<sup>31</sup> See YOUNG, *op. cit. supra* note 4, at 161; Clothier, *Some Aspects of the Problem of Adoption*, 9 AMERICAN JOURNAL OF ORTHO-PSYCHIATRY 598, 608 (1939); Kestenberg, *Separation From Parents*, 3 NERVOUS CHILD 20 (1943). For an extreme case, see *In re Bilyeu's Adoption*, 210 Ore. 652, 310 P.2d 305 (1957). The court allowed revocation, although the child had been in the adoptive home for six and one half years, noting somewhat ruefully that its decision "is probably unfortunate from the standpoint of the child." *Id.* at 306.

many children placed for adoption are illegitimate.<sup>32</sup> Revocation in these cases deprives the child of its only chance to escape the status and stigma of illegitimacy and thrusts it back into an environment where it has little chance to lead a happy or normal life.<sup>33</sup> For the natural parent, especially if an unwed mother, the return of the child is often not a solution to her problems and may well retard her social adjustment.<sup>34</sup>

In addition to the foregoing considerations an absolute right of revocation may provide an opportunity for natural parents to extort money from the adoptive parents in return for a promise not to revoke consent.<sup>35</sup> It also gives the natural parents the power to choose, perhaps for a consideration, between contesting sets of adoptive parents.<sup>36</sup>

The decisions allowing an absolute right of revocation often disclose a socially unenlightened treatment of the problem. Three common grounds for allowing an absolute right of revocation emerge from the cases. One rationale is that consent is necessary to the court's jurisdiction to grant the adoption and if consent is not present at the time of the hearing the court is ousted of jurisdiction.<sup>37</sup> Granting *arguendo* that consent is necessary for jurisdiction, there seems to be no reason why consent cannot be executed at a date prior to the hearing and subsist irrevocably until then.

A second common judicial attitude is that parental rights are foremost in an adoption proceeding and must be protected at the expense of the child's welfare if necessary. Typical of this view is the assertion of the Louisiana court in *Green v. Paul*: "Manifestly a decree of adoption cannot be predicated solely on the best interests of the child. . . ."<sup>38</sup> Of course the rights of the natural parents must be protected; but there is no reason why these rights cannot validly be relinquished by a consent executed prior to the hearing. Indeed, such prior relinquishment is necessary in the adoption process. A waiting period between placement and final decree is essential so that the

<sup>32</sup> 53 per cent of children placed for adoption are illegitimate. U.S. CHILDREN'S BUREAU, *op. cit. supra* note 1, at 30. For adoptions by non-relatives, which present the most legal and social difficulties, the figure is 76 per cent. *Id.* at 3.

<sup>33</sup> YOUNG, *op. cit. supra* note 4, at 152; Young, *The Unmarried Mother's Decision About Her Child*, 28 JOURNAL OF SOCIAL CASEWORK 27, 30 (1947).

<sup>34</sup> See YOUNG, *op. cit. supra* note 4, at 152-63.

<sup>35</sup> *E.g.*, *In re Adoption of Anonymous*, 286 App. Div. 161, 143 N.Y.S.2d 90 (1955), *motion for leave to appeal denied*, 286 App. Div. 968, 146 N.Y.S.2d 477 (1955).

<sup>36</sup> In *In re Thompson's Adoption*, 178 Kan. 127, 283 P.2d 493 (1955), the mother consented to an adoption by petitioners. Subsequently she changed her mind and attempted to revoke and give consent in favor of her aunt and uncle. The court, adhering to the absolute right of revocation rule, denied the adoption petition.

<sup>37</sup> See, *e.g.*, *Wheeler v. Howard*, 211 Ga. 596, 87 S.E.2d 377 (1955); *In re Thompson's Adoption*, 178 Kan. 127, 283 P.2d 493 (1955); *Green v. Paul*, 212 La. 337, 31 So. 2d 819 (1947).

<sup>38</sup> 212 La. 337, 349, 31 So. 2d 819, 823 (1947).

mutual suitability of the child and the adoptive home can be evaluated. Most statutes provide such a period.<sup>39</sup> But trial placement is unfair to the adoptive parents if the natural parents can regain custody at any time prior to the final decree. Many adoptive parents probably would be unwilling to consent to a trial placement on these terms. Some courts justify protection of parental rights at the expense of the child's welfare by rationalizing that if the natural parents are unsuitable the child can be protected in a subsequent action to deprive them of custody. This attitude is typified by the statement of the Illinois court in *Jackson v. Russel*: "The welfare of the child is a much more appropriate yardstick in a custody case than in an adoption matter. [Adoption is] a very different matter from a change of custody which could be on a temporary basis."<sup>40</sup> Foster or boarding home placement, the temporary change of custody referred to by the Illinois court, is criticized by social workers as entirely unsatisfactory for the child.<sup>41</sup> It is in no sense a satisfactory substitute for a permanent home with permanent parents and it is not a valid justification for the subordination of the child's welfare as a consideration in an adoption proceeding.

The third ground, express or implicit in many decisions allowing an absolute right of revocation, is the notion that the natural parents are inherently the best parents and the child should be kept with them at all costs. These decisions are more often characterized by maudlin sentimentality than by rational concern for the interests of all the parties. An Ohio judge taking this attitude found inspiration for his decision, allowing revocation, in two pictures which hung on the wall of his home and which, he avowed, he had viewed daily for forty years.<sup>42</sup> Another, of more lyric than artistic bent, took

<sup>39</sup> VERNIER, *op. cit. supra* note 3, § 254; CLARKE, *op. cit. supra* note 4, at 325; U.S. CHILDREN'S BUREAU, *THE CHANGING SCENE IN CHILD WELFARE* 10 (Child Welfare Reports No. 9, 1959).

<sup>40</sup> 342 Ill. App. 637, 639, 97 N.E.2d 584 (1951). See *Watson v. Nikolaisen*, [1955] 2 Q.B. 286. The *Jackson* case turned on whether the natural parents had abandoned the child, thus dispensing with the necessity of consent. The court found no abandonment and denied the adoption petition, but awarded custody to the petitioners until the natural parents improved their "conduct and habits." In an eleven year period Illinois has followed each of the three rules on revocation. Lutterback, *The Law in Illinois Pertaining to the Adoption of Children*, 8 DE PAUL L. REV. 165, 167 (1959). Illinois now allows no revocation. Authorities cited note 19 *supra*.

<sup>41</sup> See YOUNG, *op. cit. supra* note 4, at 33; Young, *supra* note 33, at 157, 163; ELLIOT & MERRIL, *SOCIAL DISORGANIZATION* 151 (3d ed. 1950); Letter from the Massachusetts Department of Public Welfare to *The University of Chicago Law Review*, Jan. 13, 1961; Letter from the Los Angeles County Bureau of Adoptions to *The University of Chicago Law Review*, Jan. 16, 1961; Letter from the Illinois Children's Home and Aid Society to *The University of Chicago Law Review*, Feb. 3, 1961.

<sup>42</sup> *In re Adoption of Kane*, 19 Ohio App. 327, 108 N.E.2d 176 (1952). One picture depicted a child being taken from its peasant mother and "adopted" by the wealthy land owner. The second picture portrayed the reunion of child and mother some years later. The child is beautifully garbed, the mother still poor but the expressions on their faces are "those of sheer joy."

liberties with the familiar American ballad in remarking: "Be it ever so humble there's no place as good as the family home . . ." <sup>43</sup> All other things being equal the notion of the innate superiority of the natural parents might be valid. But in the adoption situation all other things are seldom equal. As noted above, the natural parents seeking to revoke may not be suitable, especially if the child is illegitimate. <sup>44</sup> On the other hand adoptive parents are carefully screened by the agency, where one is involved, and tend to be above average in those family traits susceptible of empirical analysis. <sup>45</sup>

Another matter deserving consideration in an evaluation of legal doctrine concerning revocation of consent is the problem of the private and "black market" adoption where no agency is involved. <sup>46</sup> At the time her child is born the unwed mother is usually emotionally distraught. Also, unwed mothers are often seriously neurotic and have difficulty making decisions based on realistic considerations. <sup>47</sup> This mother is particularly vulnerable to efforts, well-meaning or unscrupulous, to persuade her to sign a consent. Such consents may be executed under circumstances not amounting to legal fraud or duress; but their truly voluntary nature may be questioned. When an agency arranges an adoption the mother is given professional guidance and counseling to help her realize that adoption is the best solution for her and for her child; she is not urged to sign a consent unless and until she is validly convinced of its wisdom. <sup>48</sup> In the private placement and "black market" adoption the mother may be exploited for financial gain and in any event is not given necessary counseling prior to signing the consent. <sup>49</sup> As a result she may not be psychologically prepared to consent and later may have misgivings and attempt to revoke. In this connection it is significant to note the observation of the Massachusetts Department of Public Welfare that revocation is attempted much more frequently in non-agency adoptions than in agency supervised placements. <sup>50</sup> Thus the solution to the revocation problem depends in part upon legal regulation of the private adoption.

<sup>43</sup> *Wheeler v. Howard*, 211 Ga. 596, 597, 87 S.E.2d 377 (1955).

<sup>44</sup> See text accompanying notes 32, 33 *supra*.

<sup>45</sup> *E.g.*, educational and occupational level of parents. See BROOKS & BROOKS, *ADVENTURING IN ADOPTION* 187 (1939).

<sup>46</sup> The scope of this comment does not permit an extended discussion of this topic. See Comment, *Moppets on the Market: The Problem of Unregulated Adoptions*, 59 *YALE L.J.* 715 (1950).

<sup>47</sup> Young, *supra* note 32, at 28.

<sup>48</sup> See letters from various adoption agencies to *The University of Chicago Law Review*; Young, *supra* note 33; U.S. CHILDREN'S BUREAU, *PROTECTING CHILDREN IN ADOPTION* 15 (Publication No. 354, 1959); SHAPIRO, *op. cit. supra* note 4, at 110.

<sup>49</sup> See U.S. CHILDREN'S BUREAU, *op. cit. supra* note 48, at 15; U.S. CHILDREN'S BUREAU, *ESSENTIALS OF ADOPTION LAW AND PROCEDURE* 5 (Publication No. 331, 1949).

<sup>50</sup> Letter from the Massachusetts Department of Public Welfare to *The University of Chicago Law Review*, Jan. 13, 1961.

Unfortunately the law has not been particularly effective in this area.<sup>51</sup> Also, the law should prescribe formalities for the execution of consent sufficient to safeguard the mother from those who would victimize her. Consent might be required to be executed before a judge. However, this would further congest already crowded court calendars and an appearance in court might embarrass the unwed mother.<sup>52</sup> A better provision would require the execution of consent before a social worker or officer of the state welfare department. This person could be sure the mother understands the significance of the consent and is emotionally prepared to give it. California has such a provision,<sup>53</sup> and it is reported to have been successful in almost eliminating the problem of revocation.<sup>54</sup>

The rule denying any revocation does, of course, eliminate the many problems already noted. Some adoption agencies favor such a rule.<sup>55</sup> The discretionary rule, however, would seem to be the most desirable of the three positions and it is favored by many thoughtful commentators on adoption problems.<sup>56</sup> The court, assisted by its investigative and advisory personnel, is usually in the best position to decide what course of action is best for the child and the parents in each case. The discretionary rule allows the court leeway to approve a revocation when the facts of the individual case warrant it. Of course a discretionary rule is only as good as the discretion which is exercised; thus, a consideration of judicial performance in the exercise of discretion is appropriate here. The statutes furnish no specific criteria for the guidance of the courts. Generally they require only a consideration of the best interests of the child.<sup>57</sup> Likewise, most of the decisions cite only this general principle to justify their ruling. A few decisions announce more

<sup>51</sup> See Comment, YALE L.J., *supra* note 46, at 725, 731-35; SHAPIRO, *op. cit. supra* note 4, at 112. In 1959, 39 per cent of the children adopted by non-relatives were placed without the assistance of a social agency. U.S. CHILDREN'S BUREAU, *op. cit. supra* note 1, at 3. Of course it devolves on the individual practitioner, when consulted by clients who desire to adopt or place a child for adoption, to refer them to a licensed public or private adoption agency. See Elson & Elson, *Lawyers and Adoption: The Lawyer's Responsibility in Perspective*, 41 A.B.A.J. 1125 (1955).

<sup>52</sup> GELLHORN, CHILDREN AND FAMILIES IN THE COURTS OF NEW YORK CITY 258 (1954).

<sup>53</sup> CAL. CIVIL CODE, § 226 (1949).

<sup>54</sup> Letter from the Los Angeles County Bureau of Adoptions to *The University of Chicago Law Review*, Jan. 16, 1961.

<sup>55</sup> Four of the ten agencies replying to the survey letter favored this rule.

<sup>56</sup> See CLARKE, *op. cit. supra* note 4, at 320; U.S. CHILDREN'S BUREAU (Publication No. 331) *op. cit. supra* note 49, at 14. Five of the ten adoption agencies replying to the survey letter favored the discretionary rule. One agency expressed no opinion on this point.

<sup>57</sup> UNIFORM ADOPTION ACT § 6 (best interests of the child); CAL. CIVIL CODE, § 226(a) (1960) (reasonable in view of all the circumstances; best interests of the child); HAWAII REV. LAWS ch. 331, § 331-2 (1955) (best interests of the child); DEL. CODE ANN. tit. 13, ch. 9, § 909 (1953) (on recommendation of the Department of Public Welfare or authorized adoption agency).

specific grounds, *e.g.*, stigma of illegitimacy,<sup>58</sup> encouragement of adoption,<sup>59</sup> and the fact that the child has been in the adoptive home for some time.<sup>60</sup> A Massachusetts court allowed revocation at the request of a Roman Catholic mother who discovered that the adoptive parents were Jewish.<sup>61</sup> Most of the decisions compare the financial and social condition of the natural parent or parents with that of the adoptive parents. In the majority of cases it is clear that the child will be better off with the adoptive parents and the requested revocation is denied. The absence, in cases and statutes alike, of specific criteria for the exercise of discretion is probably due in part to the simplicity of most of the cases. But "hard" cases occasionally arise. A legitimate child may be given up for adoption by natural parents in dire financial straits and their financial situation may subsequently improve.<sup>62</sup> Or the parents of an illegitimate child may marry and demonstrate the desire and capacity to give their child an excellent home.<sup>63</sup> The reports disclose very few such cases, but it is here that more concrete statutory standards would be desirable. In these cases the court must balance considerations of the suitability of the natural parents with the rights and suitability of the adoptive parents who may have cared for the child since birth. Another consideration is the effect a change of environment may have on the child. Furthermore, the court should be alert to those cases where the unwed mother has been pressured into signing a consent. The legal doctrines of fraud and duress may not be sufficiently inclusive to provide protection in these cases but judges can rectify inequities by allowing revocation.<sup>64</sup>

Besides substantive provisions, two other deficiencies in the law of revocation, and adoption in general, warrant comment. They are the lack of uni-

<sup>58</sup> *Martin v. Ford*, 224 Ark. 993, 277 S.W.2d 842 (1955); *Hendrix v. Hunter*, 99 Ga. App. 785, 110 S.E.2d 35 (1959).

<sup>59</sup> *Rhodes v. Shirley*, 234 Ind. 587, 129 N.E.2d 60 (1955); *Ex parte Schultz*, 64 Nev. 204, 181 P.2d 585 (1947).

<sup>60</sup> *A v. B*, 217 Ark. 844, 233 S.W.2d 629 (1950); *Re Adoption of Cannon*, 243 Iowa 828, 53 N.W.2d 877 (1952); *Welsh v. Young*, 240 S.W.2d 584 (Ky. Ct. of App. 1951); *King v. Shandrowski*, 218 Md. 38, 145 A.2d 281 (1958); *In re Adoption of Minor*, 338 Mass. 635, 156 N.E.2d 801 (1959).

<sup>61</sup> *Ellis v. McCoy*, 332 Mass. 254, 124 N.E.2d 266 (1955). The question of matching the religion of the child's natural parents with that of the adoptive parents is one of the most sensitive and controversial areas of adoption procedure. Apart from the merits of this controversy it should be noted that the practice of matching is followed by most adoption agencies. SHAPIRO, *op. cit. supra* note 4, at 58-60.

<sup>62</sup> An interesting case is *Adoption of McDonnell*, 77 Cal. App. 2d 805, 176 P.2d 778 (1947). The natural parents were about to move to South America where they anticipated living in primitive circumstances. When they arrived in Caracas they were able to live in a home with servants. The court allowed them to revoke consent and regain the child.

<sup>63</sup> See, *e.g.*, *Jambrone v. David*, 16 Ill. 2d 32, 156 N.E.2d 419 (1959) which, however, turned on the question of whether the parents were married when the child was conceived, thus making the father's consent necessary.

<sup>64</sup> See, *e.g.*, *Petition of Dickholtz*, 341 Ill. App. 400, 94 N.E.2d 89 (1950).

formity and clarity in the law. It is apparent from the foregoing discussion that there is wide divergence among state adoption laws. Easy interstate adoption is necessary to meet adequately the demand for adoptable children and in some cases to place a child in the most suitable home available. Yet disparity in the law can make interstate adoption an uncertain and risky affair.<sup>65</sup> The Uniform Adoption Act is a hopeful step toward needed uniformity,<sup>66</sup> but it has been enacted in only a few states.

The natural parent considering placing her child for adoption will probably discuss the matter with doctors, nurses and social workers before an attorney enters the picture. A number of adoption cases disclose that parents often are misadvised about their rights of revocation by well-meaning laymen. A common mistake is interpreting the waiting period between placement and final decree as a period during which consent can be revoked.<sup>67</sup> The law should enunciate clearly, preferably by statute, the legal effect of a consent so that laymen who will invariably advise parents can advise them correctly.<sup>68</sup> Yet only fourteen jurisdictions have a statutory provision on revocation of consent and eleven have neither statutes nor case law.<sup>69</sup>

It is apparent that adoption problems require the careful consideration of lawyers, judges and social workers. But progress and needed reform in adoption practice and procedure will not be achieved if each group works exclusively within its own field. Only by cooperation and mutual respect among the disciplines can the institution of adoption be developed adequately to meet the needs of society.

<sup>65</sup> See SHAPIRO, *op. cit. supra* note 4, at 92; DOSS, *op. cit. supra* note 29, at 209; BROOKS & BROOKS, *op. cit. supra* note 45, at 119; U.S. CHILDREN'S BUREAU, *op. cit. supra* note 39, at 13. For discussion of conflict of laws relating to adoption, consult EHRENSWEIG, *CONFLICT OF LAWS* § 51, p. 182; Taintor, *Adoption in the Conflict of Laws*, 15 U. PITT. L. REV. 222 (1954).

<sup>66</sup> *But see* SHAPIRO, *op. cit. supra* note 4, at 108. The author notes that in the opinion of some social welfare authorities the UNIFORM ADOPTION ACT is "incomplete and inadequate."

<sup>67</sup> *E.g.*, Petition of Dickholtz, 341 Ill. App. 400, 94 N.E.2d 89 (1959).

<sup>68</sup> Even attorneys are not immune from confusion concerning revocation. See CLAD, *FAMILY LAW*, 45 (Joint Committee on Continuing Legal Education of the A.L.I. and the A.B.A.). The author erroneously states that "any court" will allow revocation of consent prior to the hearing.

<sup>69</sup> Authorities cited notes 9-22, 26 *supra*.