Identity and Personhood: Advocating for the Abolishment of Closed Adoption Records Laws

Jessica Colin-Greene

Follow this and additional works at: https://opencommons.uconn.edu/law_review

Recommended Citation
https://opencommons.uconn.edu/law_review/369
Note

Identity and Personhood: Advocating for the Abolishment of Closed Adoption Records Laws

JESSICA COLIN-GREENE

Adoptees are denied access to identifying information about their biological heritage in myriad ways. Accessing adoption records, however, is critical to the deeply personal identity formation processes of many adopted persons. This Note urges the abolishment of closed adoption records laws by addressing social science and constitutional arguments in support of unfettered access to adoptees who wish to obtain identifying information about their natural origins. This Note highlights the identity struggles faced by many adoptees who lack access to this information, and suggests an expanded understanding of the Due Process Clause of the Fourteenth Amendment to include the right of decisional autonomy in the context of identity development as a liberty interest. This Note also argues that adolescent adoptees should be permitted to obtain access to their adoption records through a parental and/or judicial approval procedure, and briefly considers children’s role within the constitutional penumbras encompassing familial and other privacy rights. Adoptees have distinct liberty and privacy interests in identity, personhood, and decisional autonomy, and evidence strongly suggests that many adolescent and adult adoptees could benefit profoundly from complete access to their adoption records.
NOTE CONTENTS

INTRODUCTION ........................................................................................................ 1273

I. BRIEF HISTORY OF ADOPTION RECORD DISCLOSURE LAW .................. 1274

II. CURRENT ADOPTION RECORD DISCLOSURE LAW ACROSS THE STATES ................................................. 1277

III. ADOPTIVE AND BIOLOGICAL PARENT INTERESTS ...................... 1279
    A. ADOPTIVE PARENTS ........................................................................ 1280
    B. BIOLOGICAL PARENTS ............................................................... 1281

IV. ADOPTEE INTERESTS ............................................................................. 1283
    A. WOUNDED FROM BIRTH: IN THE INTEREST OF SELFHOOD .......... 1283
    B. FEDERAL CLAIMS BROUGHT BY ADULT ADOPTEES .................. 1286
    C. ADOPTION AND DUE PROCESS LIBERTY INTERESTS ............... 1289
    D. CHILDREN AS CHATTEL: BADGES OR INCIDENTS OF SLAVERY .. 1291

V. ADVOCATING FOR THE MINOR-ADOPTEE ........................................ 1293
    A. ADOLESCENCE ............................................................................. 1293
    B. JUDICIAL APPROVAL AND THE BELLotti V. BAIRD PARENTAL BYPASS MECHANISM ...................... 1295

CONCLUSION ..................................................................................................... 1297
Identity and Personhood: Advocating for the Abolishment of Closed Adoption Records Laws

JESSICA COLIN-GREENE*

INTRODUCTION

Adoption is a sensitive topic. Adoptive parents, biological parents, and adoptees alike face a convergence of shame, confusion, and stigma-related issues, which make the adoption experience difficult to address. Shame stems from many sources—infertility, embarrassing or “immoral” circumstances, and early abandonment. Whatever the reasons for the imposition of secrecy, lacking access to fundamental information about one’s biological origins can be an objectifying and dehumanizing experience for innumerable adoptees. Recent movements have clarified the adoptee experience and argued for unconditional disclosure of birth and adoption records, but states have been slow to respond.

This Note argues for the total abolishment of closed adoption records laws and any related impediment to adoptees’ receipt of birth and adoption record contents. In so doing, this Note explores the psychological, legal, and constitutional dimensions of the adolescent and adult adoptee experience. In Sections I and II, this Note explains past and current adoption record disclosure law in the United States in order to fit the current adoption records debate—and the thesis of this Note—in historical context. In Section III, this Note briefly defines the interests of adoptive and biological parents. In Section IV, this Note details the identity and personhood interests of the adoptee, as well as federal claims brought by open records advocacy groups. This Note also explores adoptees’ constitutional liberty and privacy interests. In light of these interests, this Note suggests that a more robust understanding of decisional autonomy under the Due Process Clause should include the right to personal identity construction without state interference. This Note then discusses the dehumanizing effect of closed records laws by exploring the notion of the adopted child as chattel. In Section V, this Note investigates the experiences and challenges unique to adolescent adoptees and suggests that some within this group would benefit from access to information about personal and biological heritage.

* University of Connecticut School of Law, J.D. Candidate 2018; University of Connecticut, summa cum laude, B.A. in International Social Justice 2013. I would like to thank Professor Anne Dailey for her guidance and my colleagues at the Connecticut Law Review for their thoughtful feedback and excellent company. Special thanks and gratitude to my dear friends for their extraordinary support, and a very heartfelt thank you to Robin Colin-Greene, Ira Greene, Soren Greene, and Jerry Schwab.
This Note asserts that access to information about an adoptee’s biological origins could curtail disruptive adolescent behaviors that adversely affect an adoptee as he or she advances into adulthood. To this end, this Note suggests a procedure whereby a minor-adoptee can, with parental approval, gain access to their birth information. In the absence of parental approval and/or consultation, this Note proposes that minor-adoptees go directly to a court and make a showing that they bear the requisite level of mental health and maturity to receive the information sought. This Note concludes by emphasizing the importance of accessing adoption records to the deeply personal identity formation processes of adoptees. Finally, this Note highlights the compelling emotional, psychological, and constitutional interests of adoptees, which necessitate the abolishment of state laws that impede access to adoption records.

I. BRIEF HISTORY OF ADOPTION RECORD DISCLOSURE LAW

The apprenticeship system, which served as a model for early adoption practices, was brought to the American colonies by Puritans. ¹ In the colonies, child labor was in great demand, and orphans were apprenticed, or “bound out.”² At the time, concern for child welfare was far eclipsed by economic necessity.³ The term “adoption” did not come into use until the mid-nineteenth century, and these “adoptions” were devoid of any binding or legal provisions.⁴ Although there were no standards of care for orphaned children at this early stage, the colonies eventually made the shift to a standard of care that regulated placement of children in order to protect the child’s best interests and welfare.⁵ The shift was prompted when reformers recognized that a great many children had been placed in uncaring, abusive, and unwholesome homes.⁶

In following the trend toward a “best-interests” standard, the Commonwealth of Massachusetts passed what is generally considered to be the first American adoption law in 1851.⁷ This early Massachusetts law

---

² SOROSKY ET AL., supra note 1, at 30.
³ Id.
⁴ Id. at 31. Sorosky does recognize, however, that a number of adoptions during this time period were recognized by courts if a particular family made arrangements to have a particular child become an heir and such arrangements were made using acceptable legal documentation. Id.
⁵ Hildebrand, supra note 1, at 519.
⁶ See SOROSKY ET AL., supra note 1, at 31–32 (“The first legal regulations in the United States came about because there was such widespread need to control the wholesale distribution of children to homes where they were used as cheap labor.”).
⁷ An Act to Provide for the Adoption of Children, Acts and Resolves Passed by the General Court of Massachusetts, ch. 324 (1851); Wayne Deloney, Unsealing Adoption Records: The Right to Privacy
emphasized child welfare, required written consent from both biological parents before the severance of legal ties, and required judicial approval in order for an adoption to be consummated. The "best-interests" standard—a trend that spanned a century, starting from its inception in the mid-1800s—is considered to be one of the most significant American contributions to the law of adoption.

Under early adoption laws, adoption records were not sealed and were open for public inspection. The trend shifted toward closure of adoption records around the turn of the century, when a combination of legal and scientific factors resulted in the cultural stigmatization of adoption. In order to protect adopted children from the stigma associated with illegitimacy and related prejudices, reformers convinced states to enact further regulation. Many states soon enacted statutes requiring adoption investigations and probationary periods.

The earliest of these was a 1917 Minnesota law requiring that adoption records be barred from inspection by anyone not a party in interest to the adoption. In a further effort to reduce the stigma of illegitimacy, as well as to improve state data collection of children’s vital statistics, in the 1930s and 1940s states began issuing new birth certificates to adopted children that included only the names of the child’s adoptive parents. By 1948, confidentiality laws had developed such that nearly every state issued new birth certificates upon the issuance of an adoption decree, and with it a fictional “rebirth.” It is believed that an additional purpose of issuing new birth certificates was to buttress the connection between the adoptee and his or her adoptive family.

The initial purpose of sealing the original birth certificate and subscribing to the legal fiction of the new one was to protect the adoptive

References:

Versus the Right of Adult Adoptees to Find Their Birthparents, 7 WHITTIER J. CHILD. & FAM. ADVOC. 117, 119 (2007); Hildebrand, supra note 1, at 519.

An Act to provide for the Adoption of Children, supra note 7; Hildebrand, supra note 1, at 519.

Hildebrand, supra note 1, at 519.

Hildebrand et al., supra note 1, at 32.

Hildebrand, supra note 1, at 519–20.

See id. at 520 (noting that adopted children had fewer inheritance rights than biological children, that courts and legislatures favored biological over adoptive parents in custody disputes, and that the scientific community propagated a theory linking unmarried mothers to feeblemindedness).

Id.

Id.


Id.; Deloney, supra note 7, at 120.

Hildebrand, supra note 1, at 520–21.

family from intrusion by persons not involved in the adoption. In other words, early statutes were not intended to keep information confidential from the parties in interest to the adoption (the adoptee, adoptive parents, biological parents, and their respective legal representatives), but from the general public.

A post-World War II change in adoption clientele may be responsible for the shift from protecting parties in interest from outside intruders to protecting the parties from each other. It has been surmised that pre-World War II birth mothers were either married or divorced and simply could not support the child financially; in contrast, post-war birth mothers produced more children born out of wedlock. The unwed mothers sought protection from cultural prejudices by opting for private adoptions where administrators neither asked questions nor kept records, and operated under a veil of secrecy and nondisclosure. State-licensed agencies with professional social workers began competing with the unlicensed private administrators and secrecy became the custom. At the same time, professional social-work organizations began interpreting the "best interests of the child" to mean a full separation between the natural parents and the adoptee by sealing adoption records and proceedings, a general recommendation that state statutes reflected. Secrecy also protected adoptive couples from the shame of infertility at a time when producing offspring was both a patriotic act and a symbol of marital success.

In summation, a competition for business between licensed and unlicensed adoption agencies, combined with social workers' post-war interpretation of the "best-interests" standard, resulted in the regime of secrecy and nondisclosure of proceedings and records that ultimately prevailed up to the present. Sealed records became the "primary safeguard for adoptive families" and for birth parents alike.

19 SOROSKY ET AL., supra note 1, at 38. Another reason for sealing the original birth certificate was to protect the adoptive family from intrusion of the birth parents so that all parties might move on with their lives, although this was not the original function of sealing records. Id.

20 Hildebrand, supra note 1, at 521. By the 1930s, a few states prevented biological parents from accessing records but, in most states, the parties in interest were exempt from confidentiality clauses. Id.

21 Id. at 522.

22 See id.; Cahn & Singer, supra note 15, at 156.

23 See Hildebrand, supra note 1, at 522.

24 Id.; Cahn & Singer, supra note 15, at 156.

25 Hildebrand, supra note 1, at 522; Racine, supra note 18, at 1441.


27 See id. at 156 (noting that post-World War II social workers believed that secrecy would not only protect the unity and integrity of the adoptive family, but would also help birth mothers to move on from their indiscretion as if the child never existed, to get married, and to go on to lead "normal" lives).

28 SOROSKY ET AL., supra note 1, at 38.
II. CURRENT ADOPTION RECORD DISCLOSURE LAW ACROSS THE STATES

In the 1960s and 1970s, a change in cultural and societal perspectives regarding sex, birth control, abortion, single parenthood, and gender roles led to a decrease in the stigma associated with illegitimacy. While empowered birth mothers seeking knowledge about their relinquished children helped drive an increase in open adoptions, adult adoptees seeking knowledge of their natural origins formed advocacy groups that challenged sealed records laws. As a result of the pressure generated by these groups, many states enacted statutes permitting access to restricted information under certain conditions. A number of states granted unencumbered access to nonidentifying information contained in the records and established a variety of registry systems to facilitate the release of identifying information.

Adoption law varies from state to state. Most adoption statutes contain

---

29 Hildebrand, supra note 1, at 522–23; Racine, supra note 18, at 1441.
30 Hildebrand, supra note 1, at 523.
31 \textit{Infra} Section IV.B.
32 Hildebrand, supra note 1, at 523.
33 Nonidentifying information is information that does not include the identities of the birth parents.
34 Nearly half of the states have some form of mutual consent registry system, whereby parties directly in interest to the adoption can indicate their willingness to exchange identifying information. Cahn & Singer, \textit{supra} note 15, at 162. Both a biological relative and an adult adoptee must have registered in the affirmative in order for identifying information to be released. \textit{Id.} at 163. In some states, both biological parents must register in the affirmative, while in other states only one biological parent's consent is required. \textit{Id.} Some states require the signatures of both birth parents, both adoptive parents, and the adult adoptee. Deloney, supra note 7, at 137. Many mutual consent registries are passive, meaning that the state agency will not track down a party to the adoption once the other party has registered. Cahn & Singer, \textit{supra} note 15, at 163; Deloney, supra note 7, at 137. As such, parties may not know that the registry exists and that they have an opportunity to give their consent for the release of information. Cahn & Singer, supra note 15, at 163. Some registries are active, and an agency can seek out the other party and inform them that a party to the adoption has registered. Deloney, supra note 7, at 137. Mutual consent registries operate at the interstate level; there is no national registry currently in operation. There is very little intrastate communication, if any, and adoptees must register in the state where they were born and/or adopted. This means that an adoptee must first know where she was born and/or adopted before she can begin the registration process at all. Further, the registration form may require information unavailable to the applicant and the applicant may be required to undergo counseling. Registries are poorly advertised, and it is common for parties to remain unaware that the registry system exists. Cahn & Singer, supra note 15, at 163–64; Deloney, supra note 7, at 138.
35 Hildebrand, supra note 1, at 523.
36 Christopher G.A. Loriot, Note, \textit{Good Cause Is Bad News: How the Good Cause Standard for Records Access Impacts Adult Adoptees Seeking Personal Information and a Proposal for Reform}, 11 U. MASS. L. REV. 100, 108 (2016). The Uniform Adoption Act (UAA), drafted by the National Conference of Commissioners on Uniform State Laws in 1994, set out to standardize state, federal, and international adoption laws and regulations. The Act supports the sealing of adoption records for a period of 99 years, and permits the release of identifying information through either a mutual consent registry or by a court order based on serious medical necessity. \textit{UNIF. ADOPTION ACT} §§ 6–102(d), 6–103(d)–(e) (\textit{UNIF. LAW COMM'N} 1994); Hildebrand, supra note 1, at 524; Loriot, supra, at 108. Notwithstanding the UAA, state adoption laws continue to vary.
provisions allowing adoptees of a certain age\textsuperscript{37} to access their sealed adoption records, and these states utilize various approaches by which access may be granted.\textsuperscript{38}

A small number of states grant adult adoptees nearly\textsuperscript{39} unfettered access to their adoption records and/or original birth certificates.\textsuperscript{40} Impediments to otherwise unfettered access include a birth parent filing a denial of consent, a contact veto,\textsuperscript{41} or a request for nondisclosure.\textsuperscript{42}

Many states employ a "good cause" or comparable standard, whereby adult adoptees can seek access to their adoption records through the courts

\textsuperscript{37} States vary with regard to the age at which adult adoptees are permitted access to sealed records. Compare \textit{Tenn. Code Ann.} \S 36-1-127 (West 2017) (permitting access at the age of twenty-one), with \textit{Ala. Code} \S 26-10A-31(g) (2017) (granting access to nonidentifying information when the adoptee turns nineteen).

\textsuperscript{38} Loriot, \textit{supra} note 36, at 109. In addition to mutual consent registries, some states have enacted search and consent mechanisms that require the state to actively search for either the biological parent or the adoptee once one or the other has made the request for identifying information. Cahn & Singer, \textit{supra} note 15, at 165. If consent is either denied or the party cannot be found, the adoptee can seek access to the information through the courts under a good cause standard. \textit{Id}. As with mutual consent registries, the party seeking information is at the behest of a system over which he or she has very little control. It can be expensive and time-consuming for the intermediary to search for a biological parent. \textit{Id}. Also, the mechanism provides that contact be made only once. Therefore, an adoptee will not be notified if a biological parent desires contact after having initially declined contact. \textit{Id}. at 166. Some programs restrict access until certain conditions are met, such as requiring a waiting period during which the applicant has been registered on a mutual consent registry before the state can actively search for the other party. \textit{Id}. In addition to the mechanisms already described, many states permit adult adoptees access to their sealed records through the court system upon a showing of "good cause" or "compelling need," though neither standard is defined within any statute. Loriot, \textit{supra} note 36, at 111.

\textsuperscript{39} Administrative burdens still exist, such as fees and the submission of written requests. Loriot, \textit{supra} note 36, at 110. Tennessee, which grants access after the age of twenty-one, also offers a contact veto registry for birth parents who do not wish to be contacted under any circumstances. \textit{Tenn. Code Ann.} \S 36-1-129 (West 1996). Further, violation of the contact veto is a Class A misdemeanor. \textit{Id}. \S 36-1-132(f). The adoptee must also wait until the designated age at which she is permitted to request access. See \textit{Id}. \S 36-1-129.


\textsuperscript{41} For example, in Tennessee, a contact veto may be filed by a biological parent requesting that he or she not be contacted by the adoptee under any circumstances. \textit{Tenn. Code Ann.} \S 36-1-129. This request is recorded in the state contact veto registry. \textit{Tenn. Code Ann.} \S 36-1-128(a). If a contact veto has been filed, the adoptee is not permitted to contact that person. \textit{Tenn. Code Ann.} \S 36-1-132(a). If a contact veto has not been filed, the state will conduct a search for the biological parent in order to notify her that she has a right to file a contact veto if she wishes. \textit{Tenn. Code Ann.} \S 36-1-131. The birth parent then has ninety days to file a contact veto. \textit{Tenn. Code Ann.} \S\S\S 36-1-131(b)(2)(B). If no veto has been filed within that time, the adoptee may contact the birth parent. \textit{Tenn. Code Ann.} \S 36-1-131(b)(2)(B). Violation of the contact veto is a punishable offense. \textit{Tenn. Code Ann.} \S 36-1-132; see also Carol Chumney, \textit{Tennessee's New Adoption Contact Veto Is Cold Comfort to Birth Parents}, 27 U. Mem. L. Rev. 843, 849–50 (1997).

and will be granted access only upon a showing that the standard has been met.43 "Good cause" and comparable standards have not been defined within the respective statutes.44 Courts have found good cause in severe psychological problems caused by the absence of information,45 in determining an adoptee’s inheritance rights,46 in a particularly significant and overwhelming psychological need to know,47 as well as in a sense of obligation to one’s ancestral religion.48 The array of interpretations across jurisdictions offers little guidance to judges tasked with identifying the presence of good cause.

States offering unfettered or nearly unfettered access to adoption records are in the minority. Moreover, these states do not permit adoptees to access vital information regarding their biological origins until the adoptee has reached a certain age, thus forcing the adoptee to wait for what could be many years beyond the time at which the adoptee first developed a strong desire to access his or her adoption records. The vast majority of states permit access to adoption records exclusively by court order upon a showing of good cause, a standard that lacks precision and predictability. Thus, adoptees must first navigate the court system and file a petition for access to information about their natural origins, and then they must wait for a court to decide their fate based on undefined standards.

States are slowly coming to understand the importance of permitting access to adoption records, and progress, though painstaking, is on the horizon.49 As the leader of the New Jersey Coalition for Adoption Reform has said, "If you’re adopted it’s just a natural thing to want to know where you came from."50

III. ADOPTIVE AND BIOLOGICAL PARENT INTERESTS

Adoptive and biological parents have a variety of interests in the open records debate. Some interests are constitutionally recognized. Most interests, however, are purely emotional.

---

43 See, e.g., ARIZ. REV. STAT. ANN. § 8-120(B) (2015) (employing a "legitimate interest" standard); GA. CODE ANN. § 19-8-23(a) (2016) (employing the "good cause" standard); MASS. GEN. LAWS ch. 210, § 5C (2017) (employing the "good cause" standard); S.C. CODE ANN. § 63-9-780(B) (2016) (employing the "good cause" standard).

44 Loriot, supra note 36, at 111–12, 114.


46 Massey v. Parker, 369 So. 2d 1310, 1314 (La. 1979).


48 In re Gilbert, 563 S.W.2d 768, 770 (Mo. 1978).

49 The New Jersey Coalition for Adoption Reform recently won the battle to open records in the State of New Jersey. While the new law was approved in 2014, many birth parents remain uninformed of the development. At least eight hundred adoptees have since requested their records. Shift in Law Will Allow Adopted Children in New Jersey To Learn Names of Birth Parents, CBS N.Y. (Dec. 28, 2016, 6:12 PM), http://newyork.cbslocal.com/2016/12/28/new-jersey-adoption/ [https://perma.cc/UM7L-W6F2].

50 Id.
A. Adoptive Parents

Adoptive parents enjoy constitutionally protected familial privacy rights to establish a home and direct the upbringing and education of their children without unjustified governmental intrusion. The United States Court of Appeals for the Second Circuit found that adoptive parents' privacy rights thus encompassed the permanent preservation of sealed adoption records, lest their disclosure disrupt the adoptive family unit.

The Supreme Court in *Prince v. Massachusetts*, however, intimated that parental privacy rights were not intended to survive once the child reached the age of adulthood. Parents therefore do not have a legal right to control the decisions made by their adult children. Although open adoption records laws which permit unsealing to occur once the child has reached the age of majority do not impinge upon adoptive parents' constitutional rights, adoptive parents are perhaps most threatened by open records statutes for emotional reasons, such as fear of losing the adopted child to his or her biological parents.

There are a variety of reasons why adoptive parents may be opposed to open records statutes. For example, adoptive parents may have initially based their decision to adopt on the promise of permanent confidentiality. Adoptive parents who could not produce biological offspring may be especially opposed to open records laws if their wish was to pass the adopted child off as a birth child. Moreover, adoptive parents often view the child's interest in his or her birth parents as a rejection or a failure. Although adoption records contain documents which surely severed the legal relationship between birth parents and child, it is "wishful thinking" and "a denial of reality" to believe that the emotional, psychological, and spiritual

---


54 *Id.* at 168–69 (noting that "[t]he state's authority over children's activities is broader than over like action of adults" and that "[w]hat may be wholly permissible for adults . . . may not be so for children").

55 *Id.*; *Hildebrand, supra* note 1, at 533.

56 See *SOROSKY ET AL., supra* note 1, at 73 (indicating that adoptive parents feel threatened by open records laws because they fear losing their adoptive child to the birth parents); *NANCY NEWTON VERRIER, THE PRIMAL WOUND: UNDERSTANDING THE ADOPTED CHILD* 160 (1993) (indicating same and highlighting the agony felt by adoptive mothers vis a vis the adopted child's yearning for the birth mother); *Racine, supra* note 18, at 1452 (indicating same).

57 *Racine, supra* note 18, at 1452.

58 See *SOROSKY ET AL., supra* note 1, at 74 (describing the "feelings of shame, guilt, and anguish" experienced by couples upon discovery of their infertility).

59 *Id.* at 73.
ties between them were severed as well.  

Happily, there is evidence that a significant portion of adoptive parents favor open adoption records laws. Indeed, the bond between family members in an adoptive family unit is such that it can withstand the introduction of original records and a possible reunion. Within this context, any chasm that may exist between adoptive parents and the adopted child—often a product of the conflict over open records—can be mended by open communication and realistic expectations about all adoption-related matters. With the best interests of the adoptee as motive for an open, compassionate reunion of triad members, the adoptee may have an opportunity to heal. Adoptive parents can benefit greatly from reunion as well because supporting the adoptee in the endeavor to access his or her records can strengthen relationships within the adoptive family unit.

Adoptive parents must put aside their trepidations and focus their efforts on helping the adoptee to become whole. While some potential adoptive parents may be deterred by the thought of their child reuniting with the birth family, evidence suggests that open records laws have not adversely affected adoption rates. Potential adoptive parents who fear open records laws should be encouraged to undergo counseling prior to adoption. If they remain resistant to open records, they may not be fit to adopt at all.

B. Biological Parents

The central issue cited by birth parents in the open adoption records debate is their right to privacy and anonymity. A substantial reason for

---

60 VERRIER, supra note 56, at 163.
61 See Racine, supra note 18, at 1452–53 (describing a Cornell University study that found that 84% of the adoptive mothers surveyed felt that their adopted children should have the right to obtain their adoption records).
62 Id. at 1453.
63 See VERRIER, supra note 56, at 160–61 (describing how a poor relationship between adoptee and adoptive parents can be exacerbated by the adoptee’s desire to search for birth parents, and how the adoptive mother must be permitted to express her fears); see also Lynn Von Korff & Harold D. Grovenant, Contact in Adoption and Adoptive Identity Formation: The Mediating Role of Family Conversation, 25 J. Fam. Psychol. 393, 395 (2011), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3465677/ (describing study indicating that adoptive mothers found facilitating conversation about adoption with their adopted children benefitted the children’s “adoptive identity formation”).
64 That is, the adoptee, the adoptive parents, and the biological parents.
65 VERRIER, supra note 56, at 166.
66 Id. at 151–52; SOROSKY ET AL., supra note 1, at 192.
67 VERRIER, supra note 56, at 152.
68 Racine, supra note 18, at 1454.
69 Hildebrand, supra note 1, at 536.
sealing records is to afford the birth parent an opportunity to start anew, and many birth parents relied on the guarantee of anonymity in making their choice to relinquish the child. Despite the compelling privacy concerns that some birth parents harbor, courts have found that Fourteenth Amendment familial and reproductive privacy rights do not extend to the disclosure of personal information. Notwithstanding privacy concerns, many birth parents favor open-records statutes that afford them the chance to make contact with relinquished children. In fact, statistics indicate that the majority of birth parents would welcome a reunion with the child they gave up for adoption and an opportunity to learn who the child has grown up to become. A birth parent's interest in anonymity lessens as the adopted child matures, since the birth parent will likely have a number of years to prepare for possible contact and can plan accordingly.

It is unrealistic to expect permanent confidentiality when others' interests are involved. Further, birth parents who desire permanent confidentiality are in the minority. One suggestion is that birth parents who wish to avoid contact with their relinquished children can do so outside of the legal system just as they would any other person with whom they do not want contact. Another suggestion is that a birth parent who objects to contact can request a confidential hearing before the release of information and would then bear the burden of showing "good cause" for why identifying information should remain sealed. This procedure may be beneficial to birth mothers in cases where the child was conceived from rape or incest. In any event, openness is the ideal default. Moreover, evidence suggests that making contact yields positive results. Adoption, as an

---

71 Rosemary Cabellero, Open Records Adoption: Finding the Missing Piece, 30 S. ILL. U. L.J. 291, 297 (2006); Racine, supra note 18, at 1447.
73 Cabellero, supra note 71, at 297–98; Deloney, supra note 7, at 135.
74 Deloney, supra note 7, at 135–36; Hildebrand, supra note 1, at 529.
75 Cabellero, supra note 71, at 298.
76 Racine, supra note 18, at 1450.
77 Cabellero, supra note 71, at 298; see Hildebrand, supra note 1, at 533 (noting that total confidentiality was never guaranteed to birth parents).
78 Deloney, supra note 7, at 136.
79 Deloney submits that birth parents who do not wish for contact from their biological children are in the minority, and that maintaining sealed records would therefore not reflect the desire of the vast majority. Id. This being the case, blanket protections for all birth parents would serve as an obstacle to most. Those in the minority might fairly be expected, then, to handle the situation as they would any other complicated personal endeavor (i.e., behind closed doors).
80 Cahn & Singer, supra note 15, at 193.
81 Id.
82 Id.
83 VERRIER, supra note 56, at 166; Deloney, supra note 7, at 135.
institution, continues to thrive in the face of open records statutes, suggesting that open records laws are not deterrents to engaging in the adoption process.

IV. ADOPTEE INTERESTS

A. Wounded from Birth: In the Interest of Selfhood

Postnatal separation from the biological mother imprints upon the minds of many relinquished children feelings of deep grief, mistrust, rejection, shame, loneliness, and guilt. Also present may be a sense of not belonging to one’s family or to the greater society, as well as an absence of personal identity. During the nine months a child spends in utero, he or she lives in a state of biological, genetic, historic, psychological, emotional, and spiritual unity with his or her biological mother. It is then no wonder that a child can experience relinquishment from the arms of the biological mother as a primal trauma and that, throughout the life of the adoptee, this pivotal experience can manifest in myriad ways.

Clinical psychologist and adoption researcher Nancy Newton Verrier, herself an adoptive mother, contends that, though an infant may be physically separate from the mother, the infant’s “core-being,” or “Self,” is not yet emerged from the maternal “matrix.” At this early stage, the infant’s sense of Self is wholly contained within the birthmother. Verrier further contends that the infant’s budding identity requires time within that matrix during which he or she will undergo a slowly unfolding developmental process toward a sense of self-contained wholeness. For many adoptees, wholeness does not happen. Adoptees have reported that their premature departure from the maternal matrix has resulted in a loss of

See Racine, supra note 18, at 1454 (describing statistical evidence suggesting that states with open adoption records laws have lower abortion rates and have not experienced a decrease in adoption rates as a result of open records laws).

VERRIER, supra note 56, at 7; Racine, supra note 18, at 1443.

VERRIER, supra note 56, at 10–11, 100–03.

Id. at 10.

See id. at 21 (“[T]he severing of that connection between the adopted child and his birthmother causes a primal or narcissistic wound, which affects the adoptee’s sense of Self and often manifests in a sense of loss, basic mistrust, anxiety and depression, emotional and/or behavioral problems, and difficulties in relationships . . . .”).

Id. at 28–30.

Id. at 29.

Id.

See SOROSKY ET AL., supra note 1, at 135–36 (describing how an adoptee’s life is like a jigsaw puzzle with missing pieces and how, despite an intense longing for wholeness, the void prevents wholeness from coming to fruition).
For this reason, the search for the birthmother is a search for identity and wholeness of Self. Research strongly suggests that lack of personal history is a complex handicap for many adoptees. Adoptees are effectively denied the birthright to know their genetic selves. Nationality, ancestry, and genealogy are elements of identity that, for the adoptee, are replaced by a void. The absence of biological heritage can result in an absence of complete identity, adoptees’ questions pertaining to everything from eye and hair color to nationality and medical concerns are met with constructive silence. An adoptee is unable to tap into the past when planning for the future. Many adoptees seek information about their biological origins in order to fill the void in their identities. Healthy identity formation is crucial to the development of self-esteem. It is perfectly natural and appropriate for an individual to desire information about his or her ancestry and biological heritage in order to enrich one's sense of self and placement in the bigger picture, and to develop a notion of generational congruence and connectedness.

The denial of this essential information—and the lack of control over access to the same—can be enraging for adoptees, who may manifest this anger as embarrassment, low self-esteem, feelings of hopelessness and helplessness, and feelings of worthlessness. Moreover, the denial of access to information about one’s own biological identity and heritage,

---

93 VERRIER, supra note 56, at 32; see Shara De Lorme, Comment, Accessing Sealed Adoption Records: Considering Adoptees’ Needs and Judicial Integrity, 28 GONZ. L. REV. 103, 105 (1992) (“Taking the child from one set of parents and placing that child in another home with a new set of parents disrupts a ‘basic natural process.’”).

94 VERRIER, supra note 56, at 33; see Hildebrand, supra note 1, at 528 (“Adult adoptees who seek access to their adoption records do so because they need these pieces to fill a void, a gap in their identities.”); Susan Whittaker Hughes, Note, The Only Americans Legally Prohibited From Knowing Who Their Birth Parents Are: A Rejection of Privacy Rights as a Bar to Adult Adoptees’ Access to Original Birth and Adoption Records, 55 CLEV. ST. L. REV. 429, 434–35 (2007) (stating that adult adoptees seek access to their adoption records in order to gain an “understanding of their own personal identities and existence”); see also De Lorme, supra note 93, at 105–06 (positing that wholeness of identity includes the adoptee’s biological and historical past, and that the need to acquire such information is both powerful and primal).

95 VERRIER, supra note 56, at 100.

96 See SOROSKY ET AL., supra note 1, at 132–33 (illustrating the experiences of adoptees who long to know the details of their genetic makeup, nationality, and ancestry).

97 Id. at 131–34.

98 Id. at 131.

99 Id. at 130–34.

100 VERRIER, supra note 56, at 100.

101 Hildebrand, supra note 1, at 528.

102 Deloney, supra note 7, at 133.

103 See SOROSKY ET AL., supra note 1, at 137 (quoting psychiatrist Robert Jay Lifton).

104 Id. at 121, 130.
especially as an adult, can be profoundly humiliating and dehumanizing.\textsuperscript{105} This identity gap can leave an adoptee feeling “anonymous,” “unattached,” or distanced from others, and “always out of context.”\textsuperscript{106} For many adoptees, this basic need to know is driven by feelings of “profound psychological isolation” that stem from being unrelated to any other person in one’s life.\textsuperscript{107} This sense of being untethered to one’s ancestry can lead adoptees to struggle with feelings of purposelessness, chaos, and deep insecurity,\textsuperscript{108} which can affect job and relationship prospects.\textsuperscript{109}

Adult adoptees have formed advocacy groups that aim to challenge sealed adoption records laws and assert adoptees’ constitutional right to identifying information about their origins.\textsuperscript{110} Although adoptees’ federal claims have been largely unsuccessful in court, advocacy groups have been instrumental in bringing about change on the legislative level.\textsuperscript{111} Advocacy groups have driven a major shift in the cultural perception of adoption and the right to know one’s most fundamental identity.\textsuperscript{112} Groups contest the “hidden legacy of shame [and] fear” associated with adoption,\textsuperscript{113} while scholars and researchers echo and reinforce that and related sentiments.\textsuperscript{114}
B. Federal Claims Brought by Adult Adoptees

Adult adoptees have brought claims in federal court urging the unsealing of their adoption records on multiple constitutional grounds.115 Yesterday’s Children, an adoptee-advocacy group, brought the first class-action suit of this kind.116 The group claimed that the state’s withholding of information pertaining to natural parents’ identities was an equal protection violation based on Plaintiffs’ classification as adopted persons who, because they were the subject of discrimination, should receive closer scrutiny by courts when alleging an equal protection claim.117 Adoptees then claimed that the right to acquire this information emanated from various constitutional penumbras118 and that the denial of access also violated their Thirteenth Amendment right to be free from involuntary servitude.119 Plaintiffs claimed that they had been assigned “chattel status” as infants, which the state had then maintained.120 Although the Seventh Circuit declined to reach the merits of Plaintiffs’ claims,121 other adoptee-advocacy groups soon brought equivalent claims.122

In ALMA Society, Inc. v. Mellon,123 adult adoptees bringing Thirteenth and Fourteenth Amendment claims alleged psychological pain and suffering, concern over possible undiagnosed medical issues and related problems, fear of accidental incest, and even crises of religious identity as a result of lacking unencumbered access to their adoption records.124 The ALMA Society adoptees argued that access to their adoption records was a matter of their right to “personhood,” that their personal identities had been injured without their consent, and that they suffered a state-imposed “lifelong familial amnesia,” all of which constituted an infringement on their substantive due process rights.125 The adoptees urged that they had a

115 See, e.g., ALMA Soc’y, Inc. v. Mellon, 601 F.2d 1225, 1227–29 (2d Cir. 1979) (claim brought by adult adoptees arguing that New York adoption statutes requiring the sealing of records are invalid on Thirteenth and Fourteenth Amendment grounds); see, e.g., Yesterday’s Children v. Kennedy, 569 F.2d 431, 432 (7th Cir. 1977) (claim brought by adoptee activist group contending that statutes preventing adoptees from accessing birthparents’ identities violated adoptees’ First, Fifth, Ninth, Thirteenth, and Fourteenth Amendment rights); Schechter v. Boren, 535 F. Supp. 1, 2 (W.D. Okla. 1980) (class-action suit arguing that Oklahoma adoption statutes violate adult adoptees’ First, Ninth, and Fourteenth Amendment rights).

116 Racine, supra note 18, at 1444.

117 Yesterday’s Children, 569 F.2d at 432.

118 Id. at 432–33.

119 Id. at 433.

120 Id.

121 See id. at 433–36 (“Our affirmation is based solely on abstention.”).

122 ALMA Soc’y, Inc. v. Mellon, 601 F.2d 1225, 1230 (2d Cir. 1979). As Yesterday’s Children brought the first, the ALMA Society brought the second ever class action suit challenging sealed adoption records statutes. Racine, supra note 1, at 1444.

123 601 F.2d 1225, 1230 (2d Cir. 1979).

124 Mellon, 601 F.2d at 1229.

125 Id. at 1231.
fundamental right, independent from other parties in the adoption triad, to obtain information about their identities.  

The ALMA Society adoptees also brought an equal protection claim, alleging that adoptees constitute a quasi-suspect class whose treatment by the state is similar to, and worse than, that of those classified as illegitimates. The adoptees argued that those classified according to illegitimacy, unlike adoptees, tended to know whom their biological mothers were, or, at least, had unimpeded access to this information. Adoptees argued that they should be granted the same access to genealogical information as their nonadopted counterparts and urged that adopted status should compel at least intermediate scrutiny, if not strict. Adoptees also cited state-imposed badges or incidents of slavery within the group of adopted persons as an additional factor weighing in favor of adopted status as a suspect category.

The ALMA Society adoptees also brought a Thirteenth Amendment claim, alleging that the framers of the constitution intended to abolish not only slavery and involuntary servitude but “badges and incidents” of slavery as well. The adoptees related their situation to the selling off of slave children in the antebellum South and to slave states’ perpetual severing of the parent-child relationship through slavery. The adoptees argued that children removed from their parents and sold off to a bidder bore badges or incidents of slavery as a result, and that their involuntary removal from birth parents, as well as the state’s perpetual denial of information about their natural origins, echo such badges or incidents.

The Second Circuit found that the New York adoption statutes necessarily took the adoptive and biological parents’ rights into account, and that, in providing for access to records upon a showing of “good cause,” they did not infringe upon adult adoptees’ identity, privacy, and personhood rights. In so finding, the court pointed to the constitutionally recognized right of a parent to raise a child as the parent sees fit and the constitutionally protected sphere of the family unit. The Second Circuit also noted that

---

126 Id. at 1230–31.
127 Id. at 1233.
128 Id.
129 Id.
130 Id. 1233–34.
131 Id. at 1236–37.
132 Id. at 1237.
133 Id. The ALMA Society adoptees clearly use the term “badges or incidents” to mean “symptoms,” “manifestations,” “burdens,” or “disabilities.” Cf. Plessy v. Ferguson, 163 U.S. 537, 555 (1896) (Harlan, J., dissenting) (“[The Thirteenth Amendment] not only struck down the institution of slavery as previously existing in the United States, but it prevents the imposition of any burdens or disabilities that constitute badges of slavery or servitude.”).
134 Mellon, 601 F.2d at 1233.
135 Id. at 1232; see supra Section IV.D.
protecting the privacy rights of biological parents weighed heavily in favor of sealed records;\textsuperscript{136} the court went so far as to label the privacy rights of natural parents as being "intrinsic human rights" that justify confidentiality of adoption records regardless of an adoptee's age.\textsuperscript{137}

The Second Circuit also rejected the adoptees' equal protection claims.\textsuperscript{138} The court reasoned that adopted persons do not experience the same level of intense and persistent social stigma and legal disadvantages that illegitimates endure,\textsuperscript{139} though the court failed to include support for this proposition. The court swiftly rejected the adoptees' argument for suspect-class status on the basis of state-imposed badges or incidents of slavery.\textsuperscript{140} Finally, the Second Circuit noted that the New York statutes would nonetheless survive intermediate scrutiny because they promoted the social policy of encouraging and facilitating the adoption process, while protecting the privacy interests of the biological parents, and were therefore "substantially related to an important state interest."\textsuperscript{141}

The Second Circuit also flatly rejected the adoptees' badges or incidents of slavery argument and instead championed the traditionally narrow interpretation of the Thirteenth Amendment to include only the conditions of slavery and involuntary servitude.\textsuperscript{142} The court left "[a]bolition of the badges and incidents [of slavery] . . . to Congress."\textsuperscript{143}

A subsequent class-action lawsuit brought on behalf of adult adoptees echoed the claims made in \textit{ALMA Society}.\textsuperscript{144} In \textit{Schechter v. Boren},\textsuperscript{145} the Oklahoma statutes that Plaintiffs challenged kept records sealed unless an adult adoptee could show "good cause" to have them opened.\textsuperscript{146} Like the \textit{ALMA Society} court, the district court found that the adoption statutes served a compelling state interest and promoted social policy.\textsuperscript{147} In short, the \textit{Boren} court concluded that the rights and interests of the biological and adoptive families were properly considered in the Oklahoma adoption records laws, and that "good cause" was good enough for the adoptee.\textsuperscript{148}

\textsuperscript{136} \textit{Mellon}, 601 F.2d at 1236.
\textsuperscript{137} \textit{Id.} (citation omitted).
\textsuperscript{138} \textit{Id.} at 1234.
\textsuperscript{139} \textit{Id.}
\textsuperscript{140} \textit{Id.}
\textsuperscript{141} \textit{Id.} at 1234–36.
\textsuperscript{142} \textit{Id.} at 1237.
\textsuperscript{143} \textit{Id.}
\textsuperscript{144} \textit{Schechter v. Boren}, 535 F. Supp. 1, 3 (W.D. Okla. 1980) ("All arguments made herein by the Plaintiff were made in the recent case of \textit{ALMA Soc. Inc. v. Mellon} . . . .").
\textsuperscript{145} \textit{Id.}
\textsuperscript{146} \textit{Id.}
\textsuperscript{147} \textit{Id.} at 3–4.
\textsuperscript{148} \textit{Id.} at 3, 5.
C. Adoption and Due Process Liberty Interests

The Supreme Court has recognized liberty interests under the Fourteenth Amendment that are housed within penumbras which emanate from rights prescribed by the Constitution.\(^{149}\) Included within the constitutional penumbras is the right to make “personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education.”\(^{150}\) Thus, the individual has a constitutionally protected right to make decisions, free from governmental intrusion, regarding matters which fundamentally affect him or her.\(^{151}\) The Supreme Court has characterized these choices as among “the most intimate and personal” that an individual may make, and which are “central to personal dignity and autonomy.”\(^{152}\) The Court acknowledged that liberty under the Fourteenth Amendment denotes “the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life.”\(^{153}\) The Court has also indicated that, in defining one’s own concept of existence and personal identity, individuals must be shielded from state intrusion into the cultivation of personal relationships.\(^{154}\) Additionally, the Court has viewed the right to define one’s own identity as being “central to any concept of liberty.”\(^{155}\) As these substantive liberty interests generally pertain to decisions that affect the most personal and private aspects of an individual’s life, the constitutionally protected penumbras create “zones of privacy.”\(^{156}\)

The Supreme Court has not yet considered the issue of adoption and whether the privacy, identity, and liberty interests of the adoptee fall within a constitutional penumbra. The United States District Court for the Middle District of Tennessee considered a related issue in *Doe v. Sundquist*.\(^{157}\) The court found that: (1) the disclosure of information should be considered in terms of release of information rather than familial privacy because disclosure does not encroach upon either the adoptive or birth parents’ right to marry, to bear children, or to raise those children as they see fit, and there is no constitutionally protected right to the nondisclosure of personal

\(^{149}\) *Griswold v. Connecticut*, 381 U.S. 479, 484, 486 (1965) (finding a fundamental right of privacy in the marriage relationship to fall within the penumbra emanating from the Due Process Clause).


\(^{151}\) *Eisenstadt*, 405 U.S. at 453.

\(^{152}\) *Casey*, 505 U.S. at 851.

\(^{153}\) *Loving*, 388 U.S. at 12 (1967); *Meyer*, 262 U.S. at 400 (1923).


\(^{155}\) *Id.*


\(^{157}\) 943 F. Supp. 886, 893 (M.D. Tenn. 1996), aff’d, 106 F.3d 702 (6th Cir. 1997) (action brought by adoptive and biological parents challenging the constitutionality of an Act that allows adult adoptees to access their sealed adoption records).
information with regard to parties’ competing privacy interests; a restraint on constitutionally protected decision-making privacy interests; and there exists medical and psychological expertise which suggests that adult adoptees’ psychological challenges can be mitigated through access to their adoption records. The United States Court of Appeals for the Sixth Circuit agreed.

Professors Naomi Cahn and Jana Singer echo the District Court in Sundquist and argue that the Constitution does not proscribe states from opening adoption records. Cahn and Singer maintain that protected zones of liberty and privacy should be reinterpreted to include “the development of identity and personhood,” which the currently recognized privacy interests make possible. Access to vital information about one’s biological heritage may be critical to the discovery and construction of one’s personal identity. Therefore, in barring access to adoption records under this robust interpretation of protected liberty interests, the state is interfering with adoptees’ personal identity construction processes and private decisional autonomy. The information contained within sealed adoption records is of a nature equally personal, private, and crucial as any currently protected liberty interest which promises decisional, individual, and familial autonomy free from interference by the state.

Though an expansion of constitutionally recognized liberty interests is likely far off, states should also open adoption records on public policy grounds. Public policy considerations may include a substantial concern over the detrimental effects that perpetually sealed records have on adoptees as a class, as well as a nod to the current trend of increased openness. Indeed, the desire to know one’s true identity is a fundamental and unambiguous human instinct. The hopeful expectation is that such public policy considerations will eventually nudge the Supreme Court to expand its understanding of Fourteenth Amendment liberty interests to include those liberty and privacy interests germane to adopted persons.

158 Id. at 893.
159 Id. at 894–95.
160 Id. at 898.
161 Sundquist, 106 F.3d at 708.
162 Cahn & Singer, supra note 15, at 190.
163 Id.
164 See supra Section IV.A.
165 Cahn & Singer, supra note 15, at 191.
166 See id. at 192 (suggesting that states base open record laws upon public policy considerations until such time as the Constitution is reinterpreted to include affirmative liberty rights).
167 See Hildebrand, supra note 1, at 528–29 (describing the desire to know one’s biological heritage as a “basic human need to know” and comparing the attachment to one’s biological parents as that of the attachment to one’s gender and race); Racine, supra note 18, at 1443 (describing the need to know as a “fundamental human desire”). For a discussion about the search for identity, see supra Section IV.A.
D. *Children as Chattel: Badges or Incidents of Slavery*

Access to information about one’s genetic background, heritage, and ancestry is a birthright denied only to adoptees.\(^{168}\) For many adoptees, denial of access to birth records is an objectifying experience.\(^{169}\) Essentially, the adoptee is expected to honor a contract made over his or her body and without his or her consent.\(^{170}\) This condition smacks of slavery. As one adoptee put it, “[w]e damn sure have been bought and sold on the open market.”\(^{171}\) One adoptive parent, engaged in a heated discussion with other adoptive parents about whether their children should have access to identifying information about their birth parents, noted that the group of them had been speaking of their children as if they were chattel.\(^{172}\) Indeed, children have historically been considered as property in the context of certain constitutional privacy rights.\(^{173}\) These rights concern familial privacy and the right to control the upbringing of one’s children.

The Supreme Court noted in *Meyer v. Nebraska*\(^{174}\) that parents have a constitutional right to control the upbringing of their children.\(^{175}\) Barbara Bennett Woodhouse, an expert in children’s constitutional and human rights, posits that the underbelly of the *Meyer* doctrine is marked by the “voicelessness” and “objectification” of children.\(^{176}\) The constitutional enshrinement of the child as the private property of the parent is the footing upon which the constitutional theory of the family has been built.\(^{177}\) Further, the constitutional theory of the family ultimately pertains to power relations within the family and between the family unit and greater society.\(^{178}\) Thus, the question presented in *Meyer* and in *Pierce v. Society of the Sisters of the
Holy Names, and also presented in the context of adoption, concerns ownership over the child. The Supreme Court indicated its position on this question in its construction of Fourteenth Amendment liberty interests, which includes the right of parents to control the upbringing of their children.

Woodhouse suggests that property and ownership rhetoric during the era of Meyer and Pierce intimated not that children were in fact property, but that assumptions about children and assumptions about property were decidedly "analogous." Woodhouse further advances that children, if not the property of their parents, were "important conduits and conservers of parental property," and that the significance of this role ties directly to the maintenance and preservation of patriarchal power. From a perspective that views the role of the child as an instrument designed to maintain the legacy of the parent, first as a subject of the parent's direction, and second as the inheritor of all that the parent has bestowed upon the child, one can appreciate the stakes underlying constitutional liberty and familial privacy rights afforded parents, and why parents might feel compelled to assert those rights. The Meyer doctrine interests persist in the adoption records debate even today.

As children's rights and anti-child labor movements proliferated across the United States in the early 1900s, and as these movements sought to limit parental power over the child, their legal manifestation was the concern over child welfare and the advent of a "best interests" standard. What this suggests is that the child—once exclusively in the hands of the father—became, also, a possession of the state. This relational power dynamic plays out with full force in the context of adoption. The question of ownership endures: to whom does the adoptee belong?

---

179 Holy Names, supra note 179, at 999, 1036-37.
180 Woodhouse, supra note 171, at 1042.
181 Id. at 1047.
182 See supra Section III.A.
183 See Woodhouse, supra note 171, at 1051 (describing a cultural shift toward recognition of children's collective rights and needs as separate from the patriarchal family structure).
184 Id. at 1052.
185 See id. at 1057 (noting that judicial opinions in child custody cases centered on the issue of the child's best interest); see also supra Section 1 (discussing the advent of the "best interests" standard).
V. ADVOCATING FOR THE MINOR-ADOPTEE

A. Adolescence

Adolescence, like birth, is colored by a process of individuation from one’s parents. As such, adolescence is a time during which children search for their own identity. Adolescent adoptees can have an especially hard time during this period of struggle for self-discovery, as the lack of personal history combined with an inability to identify with the adoptive family can prove a recipe for self-destruction. Lacking a biological sense of self, some adolescent adoptees turn feelings of hurt and rejection into anger aimed at the adoptive parents. Some adoptees act out and leave, attempt to leave, or are expelled from their homes prematurely, and some are sent to adolescent treatment centers and alternative schools, which rarely address the core abandonment and identity issues at play. Some adoptees reject the adoptive parents as a way of asserting independence from those to whom they are not actually related. Still, some intentionally become pregnant in order to create a biological relative.

While adolescence is characterized by conflict between children and parents for the adopted and non-adopted alike, an adoptee’s want for biological, genealogical, and ancestral identity can significantly bar a sense of inclusion within greater society. This feeling of profound alienation, when unrecognized and unaddressed in adolescence, can spiral into adulthood and affect the adult adoptee’s spiritual, mental, and emotional development, as well as the adoptee’s ability to make career and relationship choices. Adoption expert Dr. Arthur Sorosky posits that the adolescent adoptee’s process of identity formation is complicated by having been cut

188 SOROSKY ET AL., supra note 1, at 111.
189 VERRIER, supra note 56, at 100; see SOROSKY ET AL., supra note 1, at 114 (describing adolescence as a time of pronounced concern over one’s individual and genealogical identity).
190 VERRIER, supra note 56, at 100 (“Because of the dearth of information about his own history, the adoptee often has a more stressful adolescence than his non-adopted counterpart.”).
191 Id. at 100–01.
192 Id. at 101; SOROSKY ET AL., supra note 1, at 108, 110. The academic director of one such alternative school in Utah recently noted that roughly one quarter of her clients are adolescent adoptees. She noted that her adopted clients all exhibit indications of attachment disorder, meaning that they each have difficulty forming healthy, lasting relationships, and actively pursue risky behaviors. Interview with Anonymous (Jan. 7, 2016).
193 VERRIER, supra note 56, at 102 (“Other adoptees leave because they no longer want to do what these parents, to whom they are not really related, want them to do.”).
194 Id.
195 Id. at 103.
196 Id.; see SOROSKY ET AL., supra note 1, at 106–07, 112 (providing personal reflections of adolescence from approximately twenty-seven adoptees who experienced various identity and insecurity crises, and who struggled through difficult relationships with their adoptive parents during this pivotal time, and describing the adolescent adoptee’s inability to productively plan for the future due to a lack of genealogical continuity).
off from essential parts of him or herself that remain inaccessible, and that this hitch in the development process often results in identity confusion.\textsuperscript{197} In essence, indications about one's biological identity can be indispensably important during the adolescent search for self and quest for existential rootedness,\textsuperscript{198} and this is a natural juncture at which the adoptee may wish to embark on a search for identifying information.\textsuperscript{199}

Adoptive parents and society alike are encouraged to recognize that it is natural and healthy for the adoptee to want to search for his or her biological parents, and especially the birth mother.\textsuperscript{200} Further, adoptive parents are encouraged to set aside their own insecurities and assist their adopted child in the search for information.\textsuperscript{201} The more openness that exists about the adoption experience in the adoptive household, the less likely it will be that the adolescent adoptee resorts to excessive limit-testing behavior in an effort to resolve the identity confusion.\textsuperscript{202} The adopted child is the only member of the adoption triad who has had neither choice nor control over the most fundamental aspects of his or her life.\textsuperscript{203} Having been forcibly estranged from his or her genealogical roots, the adoptee has been manipulated since birth.\textsuperscript{204} This is precisely what distinguishes the adoptee from the biological and adoptive parents. It is no wonder that many adolescent adoptees, treading through the murky waters of adolescent identity formation, become angry and resentful toward those who perpetuate the manipulation. One study found that “[r]eunions often seem to have a calming effect, so that there are no longer the urges to run away from home or engage in other self-defeating behaviors.”\textsuperscript{205} When considering the myriad ways that lacking access to identifying information can injure and handicap the adolescent

\textsuperscript{197} SOROSKY ET AL., supra note 1, at 110.
\textsuperscript{198} Id. at 113.
\textsuperscript{199} See VERRIER, supra note 56, at 122 (“The adolescent adoptee will need more information about his biological family as it becomes ... apparent that he has no long-term history with the people with whom he is living ... he will begin to think about searching during this stage of development.”).
\textsuperscript{200} Id. at 150; see SOROSKY ET AL., supra note 1, at 105, 106 (explaining how the adolescent adoptee’s natural curiosity about his biological heritage is often construed by adoptive parents as a rejection of their love and parenting, which intensifies the conflict between them).
\textsuperscript{201} SOROSKY ET AL., supra note 1, at 117 (stating that parents should “emotionally dissociate” themselves and make themselves available to assist their child in obtaining his/her records and searching for the birth parents).
\textsuperscript{202} Id. at 119.
\textsuperscript{203} VERRIER, supra note 56, at 152. Kaye Pearse, an adoptee advocate, is seeking to have her adoption annulled, and views her adoption as a contract between her adoptive parents and the state and, although she was the subject of the contract, she “didn’t agree to anything.” Pearse claims that she “had no more say in the matter than [her] house did when [she] signed a contract to buy it.” Kaye Pearse, Adoptees Should Be Able to Annul Their Relationship with Their Adoptive Parents, GUARDIAN (Aug. 4, 2015, 7:15 PM), https://www.theguardian.com/commentisfree/2015/aug/04/adoptees-annul-relationship-adoptive-parents [https://perma.cc/E6US-7ZUP].
\textsuperscript{204} VERRIER, supra note 56, at 152.
\textsuperscript{205} Id. at 151. The same study found that reunions can help ameliorate the adoptee’s relationship with her adoptive parents.
adoptive, it becomes clear that some adolescents may greatly benefit from access to their adoption records at this pivotal stage.

B. Judicial Approval and the Bellotti v. Baird Parental Bypass Mechanism

The Supreme Court, in Bellotti v. Baird,\textsuperscript{206} recognized that minors’ claims against deprivations of liberty and property interests by the state generally warrant constitutional protections equivalent to those for adults.\textsuperscript{207} At the same time, the Court recognized that states can impose restrictions on children and adolescents’ freedom to make certain important choices for themselves, as youngsters may lack the requisite judgment, perspective, and experience needed to assess potential consequences.\textsuperscript{208} As a further justification for limiting the freedom of minors, the Court cited the Nation’s history and tradition of deferring to the parental right to raise, direct, prepare, and nurture their children as the parent sees fit.\textsuperscript{209} In so doing, the Court referenced Pierce v. Society of Sisters,\textsuperscript{210} Wisconsin v. Yoder,\textsuperscript{211} and Prince v. Massachusetts.\textsuperscript{212} Still, the Supreme Court has found that absolute parental control over certain circumstances in the life of a minor unduly burdens the minor’s constitutionally protected rights.\textsuperscript{213}

In Bellotti, the Court found that the abortion decision was different from other important decisions because of the significance and severity of potentially detrimental effects of postponement in case the decision is made for the minor by default.\textsuperscript{214} The Bellotti Court, in assessing the abortion context, concluded that a minor is entitled to make her own decision about whether to seek an abortion, and that the minor would be unduly burdened by the imposition of the requirement of parental notice or consent.\textsuperscript{215} The Court outlined a procedure by which a pregnant minor may, therefore, bypass parental consultation in seeking authorization for an abortion and go directly to a court in the first instance to resolve the matter:

A pregnant minor is entitled in such a proceeding to show either: 1) that she is mature enough and well enough informed

\textsuperscript{206} 443 U.S. 623 (1979).
\textsuperscript{207} Id. at 634.
\textsuperscript{208} Id. at 635.
\textsuperscript{209} Id. at 637–38.
\textsuperscript{210} 268 U.S. 510, 534–35 (1925) (noting, in dicta, a parent’s constitutional right to direct the upbringing of his children).
\textsuperscript{211} 406 U.S. 205, 233 (1972) (holding that a parent has a right and duty to direct the upbringing of his children).
\textsuperscript{212} Bellotti, 443 U.S. at 637–38 (citing 321 U.S. 158, 166 (1944)).
\textsuperscript{213} Planned Parenthood of Cent. Mo. v. Danforth, 428 U.S. 52, 74–75 (1976) (finding that an absolute parental veto over a minor’s decision to seek an abortion was an undue burden on the minor’s right to terminate her pregnancy).
\textsuperscript{214} Bellotti, 443 U.S. at 642–44.
\textsuperscript{215} Id. at 643, 647.
to make her abortion decision, in consultation with her physician, independently of her parents' wishes; or 2) that even if she is not able to make this decision independently, the desired abortion would be in her best interests.216

A minor who satisfies the court that she is mature, well informed, and capable of making the decision independently will be granted authorization for the abortion.217 A minor may first seek approval from her parents—if she wishes—but is entitled to seek authorization from the courts notwithstanding parental consent, approval, or lack thereof.218 While parental involvement is ideal, it cannot serve as an obstruction to the realization of the minor's constitutional right.219

The right to information about one's biological heritage is as essential as one’s right to seek an abortion. As described in Part A of this Section, the adolescent adoptee’s lack of genealogical information can be a handicap whose solution should not be postponed until the adoptee is of majority age, lest the consequences of identity confusion irrevocably extend into adulthood. For many, information vital to one’s biological identity is as critical to engineering one’s destiny and planning for one’s future as the time-sensitive family-planning process of seeking an abortion, and the *Bellotti* approval mechanism should be made available for minor adoptees seeking their adoption records. This way, a minor adoptee can gain access to his or her birth records in either of two ways: (1) the minor adoptee can obtain approval from his or her adoptive parents; or (2) the minor adoptee can bypass parental notification in cases where the adoptee believes it would be counterproductive or harmful, and can go directly to the court for authorization.220 When the adolescent seeks judicial approval, he or she must make a showing that he or she is “mature enough and well enough informed” to make the decision to obtain his or her adoption records, or that receiving the information would be in his or her best interest regardless of his or her ability to make the decision independently.221

As in *Bellotti*, the deciding judge may find that the minor’s best interests would be served by parental consultation and can defer decision until such time as the court may participate in the same.222 Openness within the adoptive family leads to better outcomes,223 and the court may find that a

216 Id. at 643–44.
217 Id. at 650.
218 Id. at 647.
219 Id. at 647–48.
220 See id. at 643–44 (describing the approval mechanism in the context of abortion).
221 Id. at 643–44.
222 Id. at 648.
223 SOROSKY ET AL., supra note 1, at 119; VERRIER, supra note 56, at 151–52 (“Whatever helps the adoptee will help the relationship with the adoptive parents. . . . Searching for the birthmother is in the best interest of the adoptee.”).
family can therapeutically benefit from such openness. At the same time, a
court may find that openness will not work in certain families, in which
case an adoptee must be given the opportunity to show the court that he or
she bears the requisite level of maturity and awareness to receive the
information sought. Demanding that an adoptee wait until a certain age to
begin the process of seeking access to his or her adoption records is an
arbitrary intrusion upon the developmental process of a budding young
adult. While most scholarship arguing for open adoption records statutes
focuses exclusively on the rights of the adult adoptee, scholars ignore a
key developmental stage in the life of an adoptee where access to
information about one's personal history could be instrumental in shaping
healthy, well-adjusted members of society. While this is not the answer
for every single adolescent adoptee, the opportunity to seek access to this
vital information must be available to all.

CONCLUSION

Accessing adoption records is critical to the deeply personal identity
formation processes of many adopted persons. The compelling emotional,
psychological, and constitutional interests of adoptees necessitate the
immediate abolishment of state laws that impede unfettered access to
adoption records. This Note has illuminated the emotional and psychological
effect that lacking key information about one's biological heritage tends to
have on adolescent and adult adoptees. In so doing, this Note examined
identity and selfhood issues germane to the adolescent and adult adoptee,
and federal claims brought by open records advocacy groups. This Note
strongly suggested the expansion of constitutional liberty interests to include
the autonomous development of personal identity, and this Note discussed
the objectification of adopted persons through an analysis of adopted
children as chattel. Finally, this Note suggested a procedure whereby eligible
adoptiveees below the age of majority may gain access to their adoption
records.

Evidence strongly suggests that many adolescent and adult adoptees
could benefit profoundly from access to their birth records and the
background information contained therein. Any governmental, adoptive
parent, and biological parent interests in maintaining private control over

224 Bellotti, 443 U.S. at 647.
225 See id. (permitting the same mechanism for minors seeking an abortion).
226 See supra note 40.
227 See supra Section V.A.
228 See, e.g., Cabellero, supra note 71, at 301; Cahn & Singer, supra note 15, at 153; De Lorme,
supra note 93, at 108; Deloney, supra note 7, at 117; Hildebrand, supra note 1, at 528, 536.
229 See Cahn & Singer, supra note 15, at 172 n.102 and accompanying text (noting that minor
adoptivees may need information about their biological origins as they mature and develop a sense of
identity).
adoptees are antiquated, objectifying, and oppressive. Adoptees have pronounced liberty and privacy interests in identity, personhood, and decisional autonomy, and these analogous constitutional interests echo the deeply unjust emotional and psychological ramifications of being denied access to information essential to the formation of one's whole and complete Self. Without access to their records, many adoptees suffer from feelings of alienation and deficiency. Open records laws can help heal these wounds where secrecy has continuously failed. It is in recognizing the primacy of adoptees' interests that sealed records may become an embarrassment of the past.