

# Interventionism in the Family: Does Adoption Law in England and Wales

## Advocate the 'Theft' of Children?

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### Abstract

*This article questions the use of interventionism by the State in child protection. The law of adoption is used to contrast the public's apparent demand for the reduction of state control with children's need and right of protection from neglect and maltreatment. Particular reference is made to the recent controversial rickets cases, as well as the Pacchieri case of 2013. This article points to academic, legal and public perspectives in order to include all competing arguments involved. Finally, the article aims to demonstrate that it is sometimes necessary to undermine the sanctity of the private sphere in order to protect the society's most vulnerable - children.*

**Key Words:** *Adoption; Interventionism; Pacchieri; Children; Child Protection; State*

### Introduction

The law regarding child protection is unavoidably emotive. The divisive nature of this area of law is exacerbated by its apparent intrusion into the private sphere. This obvious conflict with the notion that the 'home and family relations [are] private'<sup>1</sup> means that there is additional emphasis on regulation and due process in this area of law. In particular, the creation of an adoption order has the effect of 'extinguish[ing] the parental responsibility<sup>2</sup> of the child's previous carers or biological parents in order to make the adopters the legal parents, a permanence that might serve to heighten the emotions of parties involved. In recent years, there has been much anti-interventionist criticism of adoption law in England and Wales by campaign groups such as 'Justice for

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<sup>1</sup> Nikolas Rose, 'Beyond the Public/Private Division: Law, Power and the Family' (Journal of Law and Society 14 1987) 61

<sup>2</sup> Adoption Act 1976, s.12(3)(a) (AA).

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Families<sup>3</sup> and 'Forced-Adoption'.<sup>4</sup> These groups campaign against legal and social services and strongly criticise their practices. An example of the scandals incited by campaign groups is evident in the plethora of claims<sup>5</sup> that followed *LB Islington v Al Alas and Wray* [2012],<sup>6</sup> when a child was returned to their parents after it was uncovered that undiagnosed rickets, as opposed to physical abuse, had caused multiple fractures in his older sibling. More recently, Alessandra Pacchieri's court-ordered cesarean-section and the subsequent placement of her newborn for adoption, sparked public outrage with regards to the 'theft' of children by social services in the case of *P (A Child)* [2013].<sup>7,8</sup>

This article critically analyses the concerns of those who campaign against adoption. Anti-adoption campaigners fear that the law allows children to be 'snatched' by social services when there is no risk to the child's welfare.<sup>9</sup> Campaign groups identify the permanence of adoption as its predominant problem and instead, promote alternative forms of care (i.e. Special Guardianship within the family or reunification). Furthermore, anti-adoption campaigners find issue with the social services' role in applying adoption law. An article in the Daily Telegraph highlights these feelings by referring to social workers as the 'state child snatchers' who are 'authoritarian' and 'wicked'.<sup>10</sup> A leader in anti-adoption campaigning, John Hemming MP, argues that there is a 'prejudice problem' in social worker reports that lead to 'procedurally unlawful' adoption orders.<sup>11</sup> Furthermore, Ian Josephs (a fellow

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<sup>3</sup> Justice for Families Campaign Group <<http://www.justice-for-families.org.uk/>> (Accessed 10<sup>th</sup> June 2015)

<sup>4</sup> Forced Adoption <<http://forced-adoption.com/>> (Accessed 23<sup>rd</sup> February 2016)

<sup>5</sup> Diane Taylor, 'Parents reunited with baby after court rules fractures were caused by rickets' (The Guardian, 9<sup>th</sup> May 2012)

<<http://www.theguardian.com/society/2012/may/09/parents-baby-court-fractures-rickets>> (Accessed 23<sup>rd</sup> February 2016)

<sup>6</sup> [2012] EWHC 865 (Fam)

<sup>7</sup> [2013] EW Misc 20

<sup>8</sup> Cole Moreton, 'Alessandra Pacchieri: Pitiful Tale of a Mother and her Lost Child' (The Telegraph, 7<sup>th</sup> December 2013) <<http://www.telegraph.co.uk/news/uknews/law-and-order/10503079/Alessandra-Pacchieri-Pitiful-tale-of-a-mother-and-her-lost-child.html>>

(accessed 4<sup>th</sup> April 2014)

<sup>9</sup> Ian Joseph, 'Forced Adoption' <<http://www.forced-adoption.com/case-scenarios.asp>> (Accessed 4<sup>th</sup> April 2014)

<sup>10</sup> Moreton (n8)

<sup>11</sup> John Hemming, 'Experts must be Neutral (*Lashin v Russia*)' (John Hemming's Web Log, August 8<sup>th</sup> 2013) <<http://johnhemming.blogspot.co.uk/search?q=lashin+v+russia>> (accessed 14<sup>th</sup> March 2014)

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campaigner) describes the phenomenon of “social workers tak(ing) babies at birth, not for anything (the parents) have done, but for something someone with a “crystal ball” thinks they might do in the future”.<sup>12</sup> The media’s coverage of the adoption proceedings for Alessandra Pacchieri’s child clearly depicts how those opposing adoption use personal stories and sensationalism to provoke public anger at social workers and the law. For example, one outlet describes social services as “(taking) child from womb”.<sup>13</sup> Thus summoning images of violence and drama. This article intends to illustrate that the claims made by anti-adoption campaigners and media outlets are exaggerated and driven by their politically driven opposition to state intervention. It does so by explaining the tensions between the traditional liberal ideal of an individual’s private life and the more contemporary model, which recognises the need for state intervention. Then, the article proceeds to consider more closely the part this tension plays in the application of adoption law: as the modern state demands both self-regulation and a high-level of intervention. It is understood that this is a controversial topic and one that should be approached tentatively. Nonetheless, it is argued that adoption law’s purpose is not to allow child ‘stealing’<sup>14</sup> or intrusion by the state, but rather, to prioritise the protection of children’s welfare.<sup>15</sup> Interventionism has increased with our growing appreciation of children as valuable, vulnerable and in need of protection and will continue to do so as appreciation of the child’s place in society grows.

### Implications of Interventionism on Family Law

The term ‘interventionism’ refers literally to the scope of the state’s intervention into our private lives. While state regulation and the regulation of the family in England

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<sup>12</sup> Joseph (n9)

<sup>13</sup> Colin Freeman, *‘Child taken from womb by caesarean and then put into care’* <http://www.telegraph.co.uk/news/uknews/law-and-order/10486452/Child-taken-from-womb-by-caesarean-then-put-into-care.html> (Accessed 27<sup>th</sup> October 2015)

<sup>14</sup> Joseph (n9)

<sup>15</sup> Adoption and Children Act 2002, s.1 (ACA)

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and Wales is grounded in the liberal principles of 'freedom' and 'privacy', there must still be an element of state control and intervention for the protection of individuals. The question at hand in the adoption controversy, is the level to which that control should extend and at whom that control is targeted. Although undoubtedly affected by the countless interventionist 'family reforms' made in the 20th century, contemporary family law still advocates limited 'coercive intervention' into the family. Maintaining limited intervention has become complicated, however, due to the prioritisation of protecting child welfare. The Children Act 1989 was the first piece of legislation to recognise the need to protect and prioritise the welfare of children.<sup>16</sup> Sociological studies prior to the creation of the Act found that 'working with parents is not only more respectful, but more effective' in protecting the welfare of children.<sup>17</sup> It was on the basis of these findings that the Act was created and, consequently, many provisions in the Act guide local authorities to involve parents in child care proceedings (i.e. the 'partnership principle').<sup>18</sup> Although the Act appears to promote limited state regulation of families, the implementation of the 'partnership principle' in the Act is inherently paternalistic. The philosophy of paternalism refers to 'the interference with a person's liberty of action justified by reasons referring exclusively to welfare'.<sup>19</sup> In this sense it follows naturally that the Act may be paternalistic in nature as law in itself is paternalistic. The notion of state paternalism in regards to child protection assumes that 'the state has a primary responsibility for children and ought to exercise full control except where delegation to the family is justified'.<sup>20</sup> This assumption implies that familial privacy is a privilege earned by parents, rather than a right bestowed to them by a liberal government. Thus, although the law in theory promotes the personal freedom described by liberal theorists, in practice the State intervenes extensively in the family. A good example of the conflict between law and practice can be seen in the creation of care orders, where parental responsibility is preserved and, hence, the partnership

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<sup>16</sup> Children Act 1989, s.1 (CA)

<sup>17</sup> Ruth Sinclair and Roger Grimshaw, 'Partnership with Parents in Planning the Care of their Children' *n*(Children and Society Vol. 11 1997) 231

<sup>18</sup> i.e. CA s.17(1)(b): to promote the upbringing of such children with their families

<sup>19</sup> Martin Calder, 'Child Protection: Balancing Paternalism and Partnership' (British Journal of Social Work 25 1995)749 (quoting Dworkin)

<sup>20</sup> Ibid 749

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principle is applied. In this instance legislation appears to uphold the principle of personal autonomy by allowing parents to retain responsibility for their children, even in the most extreme of circumstances. In practice however, the 'legislation is contradicted in the guidance and regulations issues alongside'<sup>21</sup> the Act. This contradiction between legislation and guidance has 'encouraged the 'hovering, anxious' type of social worker'<sup>22</sup> and consequently, has resulted in children being monitored to the point of the social worker becoming an extra parent.<sup>23</sup> Calder explains this phenomenon to be a result of our 'current social and political context, where services and personal protection predominates'.<sup>24</sup> This analysis implies that it is the public's expectations of the state that have created the extensive paternalism we are now faced with.

### Our Private Life

Questions regarding the limits of state intervention run to the very core of the controversy surrounding adoption. The debate surrounding interventionism is rooted in the belief of early liberal theorists that it is an inherent right of 'man' to be free of state rule in the private domain. It is this idea which informs anti-adoption campaigner complaints regarding state intervention. John Locke is considered by many to be the forefather of liberal government and his work, *The Second Treatise of Government*, is particularly relevant to the topic of the public versus private realms. Locke's theory on liberal government revolves around the idea that we are born with the 'natural' and fundamental rights to live in a 'perfect state of freedom'<sup>25</sup> and to be 'equal amongst each other without subordination'.<sup>26</sup> Locke's description of these rights as 'natural' implies that disregarding them would be unnatural and

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<sup>21</sup> Calder (n19) 753

<sup>22</sup> Ibid

<sup>23</sup> Social workers "too stressed" to do their job: Rachel Schraer, *Social workers too stressed to do their job according to survey* (Community Care, January 7<sup>th</sup> 2015)

<<http://www.communitycare.co.uk/2015/01/07/stress-stopping-job-social-workers-say/>> (Accessed 23rd February 2016)

<sup>24</sup> Calder (n19) 763

<sup>25</sup> John Locke, *The Second Treatise of Government* (1690) Chap. I s.1

<sup>26</sup> Ibid Chap. I s.4

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consequently, wrong. Furthermore, *'The Second Treatise of Government'* makes frequent reference to the concept of 'private property' and how this pertains to the private realm. Locke's ideology regards the world, in its natural state, to be communal property belonging to everyone equally. Locke depicts obtaining property as a transformative process. Thus, where something is improved through the 'labour of his body and the work of his hands, we may say, (the results) are properly his'.<sup>27</sup>The emphasis this formulation of property puts on transformation means that earthly resources must be made useful to be owned (i.e. clay mud is communal property, but a brick may be personal property). Through his exploration of 'freedom' and the 'private', Locke 'explicitly and systematically distinguishes political from familial (and generally personal) relationships'.<sup>28</sup> Locke's work therefore appears to advocate a strong non-interventionist stance, similar to that of anti-adoption campaigners. However, Locke's work also refers to the notion of state protection through the 'social contract'.<sup>29</sup> The social contract infers that a man 'divests himself of his natural liberty' when he agrees to 'join and unite into a community'.<sup>30</sup> This community then ensures our 'comfortable, safe and peaceable living'.<sup>31</sup> Thus Locke concludes that, although there is a natural right to freedom and privacy, these rights are not absolute and may be overruled by each man's obligation to the democratic community that he joins.<sup>32</sup> As an early liberal theorist, Locke constructs a strong division between public and private but also, argues for the loss of freedom in return for community protection. Locke's description of the social contract represents the first formation of state power in the public sphere. Thus, Locke identifies the problem faced by the liberal state of wanting to protect community members and yet, wanting to protect their private lives; the battle which we now see between those advocating and against adoption.

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<sup>27</sup> Mary Walsh, 'Locke and Feminism on Private and Public Realms of Activities' (The Review of Politics Vol. 57 No. 2 1995) 261

<sup>28</sup> Locke (n25) Chap. VIII

<sup>29</sup> Ibid

<sup>30</sup> Ibid Chap. VIII s.95

<sup>31</sup> Ibid Chap. VIII s.95

<sup>32</sup> Ibid Chap. VIII s.97

Foucault

A more contemporary liberal political theorist is Michael Foucault, famous for his creation of the notion of 'governmentality'. This definition refers to the art, or 'how', of governance throughout all levels of society. The notion of governmentality is also used by Foucault to rationalise state power and explain 'how' this power functions. Foucault argues that the birth of the 'state' in the 16th Century created with it a new form of 'political power' that is both 'individualising and totalising'.<sup>33</sup> Thus, in the modern state, individuals are recognized and integrated so long as they adhere to a certain standard (i.e. the standard of the law abiding and contributing citizen). This element of power leads to the omnipotent nature of state regulation and intervention. Foucault further explains that 'power exists only when it is put into action'.<sup>34</sup> Thus, the state retains its power by acting on the actions or, the possibility of action by the individual. In regards to adoption law, this theory of state power refers to the creation of an adoption order (state action) in response to, or to prevent, the abuse of a child (individual action). In light of this description of state power, it would appear that Foucault believes interventionism to be an inherent part of governance. According to Foucault, intervention takes two opposing shapes. The first is simple, 'direct intervention by means of empowered and specialised state apparatuses'.<sup>35</sup> The second is more interesting and relates to the aforementioned 'totalizing and individualizing' form of state power. Foucault argues that the state intervenes with and regulates individuals by attempting to make them responsible and accountable for their own actions. The state 'aspires to construct prudent subjects'.<sup>36</sup> Allowing individuals to regulate themselves within the private sphere is therefore merely a 'technique of power'<sup>37</sup> that allows a 'reduction in sorts of welfare-state

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<sup>33</sup> Michel Foucault, 'The Subject and Power' (Critical Inquiry Vol. 8 No. 4 1982) 782

<sup>34</sup> Ibid 788

<sup>35</sup> Thomas Lemke, 'The Birth of Biopolitics: Michael Foucault's Lecture at the Colege de France on Neo-Liberal Governmentality' (Economy and Society Vol. 30 No. 2 2001) 201

<sup>36</sup> Ibid 201

<sup>37</sup> Lemke (n35) 203

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intervention',<sup>38</sup> but also has the effect of increasing pervasive state regulation. However, self-regulation is only intended to work for the majority of the public and time (i.e. most people do not break the law and do contribute to society but there are others and times when people fail to self-regulate). When self-regulation fails, the state intervenes with its 'specialized state apparatuses' and thus retains its power.

Foucault's theory of governmentality in the neoliberal state illustrates a more pervasive form of governance than that described by Locke. Foucault argues that the contemporary liberal state has formed a disciplinary society in which 'law's place diminishes with the growth of more diverse forms of discipline' (i.e. medicine, human sciences).<sup>39</sup> Thus, as these disciplines grow, a 'different modality of power' is born and new regulatory bodies emerge.<sup>40</sup> In regard to family law, 'the history of the child as a specific category of people with special needs [...] is clearly part of the growth of the human sciences', particularly of the 'psy' professions.<sup>41</sup> Therefore, as knowledge of the child as an important member of the community has grown, regulation has 'extended itself more and more to cover family matters'.<sup>42</sup> Foucault connects the 'special areas of concern to the emergent 'psy' professions'<sup>43</sup> with the expansion of intervention. Thus, while Locke understood a basic form of regulation in terms of membership of the community, Foucault identifies the expansion of intervention due to the creation of more regulatory bodies. In family law, this would mean the social services. Foucault's connection between discipline and governance helps explain the difference between the basic form of state protection seen in early liberal societies and, the highly-regulated neoliberal society that we live in today.

### Feminist Theories

The question of interventionism is also central to feminist debate as it is argued to be imperative to limiting hidden inequalities. While those against adoption call for

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<sup>38</sup> Ibid 202

<sup>39</sup> Carol Smart, *Feminism and the Power of Law* (Routledge 1989) 14

<sup>40</sup> Ibid 15

<sup>41</sup> Ibid

<sup>42</sup> Ibid 17

<sup>43</sup> Smart (n39)



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limited intervention, for women ‘the measure of intimacy [is] the measure of oppression’<sup>44</sup> and thus, interventionist governance is fundamental in lifting this oppression. Katherine O’Donovan explains the potential oppressive nature of families as a ‘black box’.<sup>45</sup> O’Donovan’s ‘black box’ illustrates the family as an entity into which ‘the law does not purport to peer’.<sup>46</sup> However, the ‘black box’ family is vulnerable as regulators fail to see the ‘power inequalities’ that exist within the box.<sup>47</sup> Thus, family members with in the black box, and particularly children, are left vulnerable to oppression. The familial oppression identified by O’Donovan supports state intervention as it is required for the black box to be opened and, for hidden inequalities to be exposed. In addition to O’Donovan’s black box theory, Frances Olsen’s ‘first level of criticism’ similarly calls for more state interventionism.<sup>48</sup> This ‘first level’, referred to by Olsen, is grounded in the simple objection to ‘the withdrawal of law from the so-called domestic sphere’ and the effect this withdrawal has on the oppression of women and children.<sup>49</sup> However, Olsen’s ‘second level of criticism’ becomes more complicated and argues that the public and private realms are ‘shown not to be analytic categories at all’.<sup>50</sup> According to Olsen’s second level, it is therefore difficult, or even impossible, to ascertain whether an action is private or by the state. There is a general consensus that ‘what we want to do’<sup>51</sup> is private action and this form of action can encompass a number of different activities (i.e. domestic violence, watching graphic porn). The problem that arises from the private vs. public distinction is that we can only understand something as ‘unjust’ (and thus subject to state action) where society, and the law, does not support the private action. A good example of this can be seen in 1950s America, where blatant discrimination against African-Americans was acceptable and legal. Until norms around discriminatory behaviour changed, committing the private action of discrimination could not be wrong or worthy of state action. This

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<sup>44</sup> Ruth Gavison, ‘*Feminism and the Public/Private Distinction*’ (Stanford Law Review Vol. 46 No.1 1992) 1

<sup>45</sup> Katherine O’Donovan, ‘*Family Law Matters*’ (Pluto Press 1993)

<sup>46</sup> Hilarie Barnett, ‘*Sourcebook on Feminist Jurisprudence*’ (Routledge 2012) 152

<sup>47</sup> *Ibid* 153

<sup>48</sup> France Olsen, ‘*Constitutional Law: Feminist Critiques on the Public/Private Distinction*’

(Constitutional Commentary 10 1993) 323

<sup>49</sup> *Ibid* 323

<sup>50</sup> *Ibid* 324

<sup>51</sup> *Ibid* 324

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particular line of reasoning does not critique interventionism in itself, but rather what actions we put in either the public or private categories. As Foucault explains, the growth of knowledge has changed attitudes towards children by allowing us to further understand their importance to society and the need for their protection. Consequently, the abuse of children (like racism against African-Americans) has become a matter worthy of state protection as is reflected in the reforms made in the early 21<sup>st</sup> Century.

### Adoption Law

#### Principles behind the Adoption and Children Act 2002

The aforementioned interventionism employed by the state is governed by statute and case law. Most predominantly in adoption law, the Adoption and Children Act 2002 effected a long-awaited reform of adoption law and created a more child-centric, interventionist adoption law. The Act reflected changing attitudes concerning adoption and acted to formally codify these attitudes. Early adoption legislation, such as The Adoption of Children Act 1926, had a predominant and simple aim of replacing 'the widespread practice of unregulated de facto adoption with a legal route'.<sup>52</sup> There was also a public consensus at this time that adoption was a form of service to benefit infertile couples and single mothers. A mother's humiliation of having a child out of wedlock could be alleviated by at the same time blessing a couple with a baby. The adopted child in this transaction became a commodity, and their welfare was given little consideration. Throughout the 20<sup>th</sup> Century, in fact, the issue of 'safeguarding the welfare of babies... was not (at all) addressed'.<sup>53</sup> The Adoption and Children Act 2002 overturned this failing and changed the function of adoption to be a service for children.<sup>54</sup> The Act implements the 'welfare principle',<sup>55</sup> making the adopted child's

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<sup>52</sup> Caroline Ball, *The Adoption and Children Act 2002: A Critical Examination* (Adoption and Fostering Vol.29 No.2 (2005) 6

<sup>53</sup> Ball (n52) 7

<sup>54</sup> DoH 'Making a Difference' 1999a

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welfare of paramount importance and consideration.<sup>56</sup> The Act was also created with the purpose of increasing the number of adoptions and encouraging local authorities to use adoption. It is therefore understandable that some parents and campaigners have become anxious about the perceived overuse of adoption and the arbitrary placement of children. Furthermore the Act's paramountcy principle, which requires that the "paramount consideration [...] must be the child's welfare, throughout his life",<sup>57</sup> transforms adoption law from a service for birth parents into a threat to their family lives. More recently, the Children and Families Act 2014 has placed further emphasis on speeding up the adoptive process through enforcing time limits on care proceedings<sup>58</sup> and thus, further limiting the protection of birth parents. Consequently, the law has become the subject of criticism. On the other hand, however, it is important to note that the paramountcy principle can also benefit birth parents. The welfare principle incorporates the 'natural parent presumption',<sup>59</sup> the assumption that a child's welfare is best protected by being raised by his natural parents, and thus offers further support to the maintenance of biological families. The principle also recognizes the benefit of contact between children and their birth parents, evident in the replacement of the old 'transplant' model with new forms of more open adoption.

Thus, the paramountcy principle does not aim to separate biological families but rather, subordinates parental rights to allow for the prioritisation of child welfare. This principle is reflected in the new emphasis on social services 'working with' families and using the pre-proceedings process to avoid entering care proceedings and ultimately reducing parental input.<sup>60</sup>

### Placement for Adoption

When working with parents fails, social services will turn to adoption to protect the child. The first step in the adoptive process is the placement of the child with

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<sup>55</sup> General principle found in the Children Act (1989)

<sup>56</sup> ACA s.1(2)

<sup>57</sup> Ibid

<sup>58</sup> Children and Families Act (2014), s.14

<sup>59</sup> *Re D (Care: Natural Parent Presumption)* [1999] CFLQ 423

<sup>60</sup> Public Law Outline 2014

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prospective adopters. The child may be immediately placed for adoption when all parties with parental responsibility (including the birth parents) have consented to the placement,<sup>61</sup>In circumstances where the parties refuse to consent, the local authority must apply for a placement order from the Court.<sup>62</sup> The creation of a placement order is regarded as a gravely serious measure and must be considered to be the most beneficial option for the child.<sup>63</sup> The placement order also represents a major element of the construction of adoption as ‘theft’ by anti-adoption campaigners.<sup>64</sup> However, placement orders are usually made where the birth parents’ parental responsibility has already been restricted through the creation of a care order<sup>65</sup> and when the ‘significant harm’ test has been satisfied.<sup>66</sup> The placement order is also subject to consideration of the welfare principle and checklist.<sup>67</sup> In cases of extreme abuse and harm, the application of the welfare principle may lead to the creation of a placement order even where finding prospective adopters is a seemingly impossible task.<sup>68</sup> Contrastingly, the principle may also act to prevent a placement from taking place. In *Re S-H (A Child) NS-H v Kingston upon Hull City Council and MC* [2008],<sup>69</sup>for example, it was held that placement is only appropriate when the child is both ‘ready’ and in a ‘condition’ to be adopted. Although a child’s placement is relatively early in the adoption process, the creation of a placement order has massive implications for the child’s birth parents. Most predominantly because any contact order in place is extinguished, thus leaving parents vulnerable to receiving more limited contact with their child as contact arrangements are reconsidered.<sup>70</sup> Furthermore, when the child has been placed with prospective adopters, only the local authority has the right to remove them from their care.<sup>71</sup>The two aforementioned provisions have the effect of giving birth parents limited (or no) access to their child in order to ascertain their child’s feelings on the placements.

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<sup>61</sup> ACA s19(1)

<sup>62</sup> Ibid s.21(1)

<sup>63</sup> Ibid s.1(6)

<sup>64</sup> Joseph (n9)

<sup>65</sup> CA , s.31(1) <sup>66</sup>

<sup>66</sup> Ibid s.31(2)(a)

<sup>67</sup> ACA s.1(4)

<sup>68</sup> *Re T (Children: Placement Order)* [2008] EWCA Civ 542

<sup>69</sup> [2008] EWCA Civ 493

<sup>70</sup> ACA s.27(4)

<sup>71</sup> Ibid s.34(1)

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The placement order also signifies a block on parental objections to the final adoption order, except in 'exceptional circumstances'.<sup>72</sup> With these provisions in mind, it seems obvious why placement is the focus of anti-adoption concerns. The placement of a child can appear to be a 'theft' as parents often do not consent and have no power to stop the placement: the parents effectively lose their control. The creation of placement orders clearly represents the subordination of parental rights to allow for the protection of the child's welfare. However, where the 'significant harm' test is satisfied, this high level of intervention is necessary to protect vulnerable children.

### Adoption Orders

The creation of an adoption order is dependant on either continued parental consent or dispensed consent and the Court's consideration of the Act's welfare checklist.<sup>73</sup> The welfare checklist directs the Court to consider certain elements of the child's life. The elements codified by the checklist include; the child's wishes and feelings, the child's needs, the likely effect adoption will have on the child, the child's relevant characteristics, any harm suffered by the child and the child's relationships with their wider family.<sup>74</sup> Unlike the welfare checklist found in the Children Act 1989, the adoptive welfare checklist demands that the Court contemplates the child's welfare for the remainder of their life.<sup>75</sup> The Court particularly focuses on examining the child's relationships with their wider family.<sup>76</sup> In *Re C* [2009], for instance, the Court turned to the children's relatives and held that the children should be placed with their grandmother as they had already formed a close bond with her.<sup>77</sup> In a similar vein, the Court is also obliged to consider alternative orders to adoption,<sup>78</sup> as well as, the child's ascertainable feelings.<sup>79</sup> The consideration of familial and alternative orders falls under the policy that adoption should only be used as a last

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<sup>72</sup> Ibid s.47

<sup>73</sup> Ibid s.1(4)

<sup>74</sup> Ibid

<sup>75</sup> *Re P (Children)* [2008] 2 FCR 185

<sup>76</sup> ACA s.1(4)(f)

<sup>77</sup> [2009] 1 FLR 1425

<sup>78</sup> ACA s.1(6)

<sup>79</sup> Ibid s.1(4)(a)

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resort. The application of the welfare checklist is, one could argue, the most positive element of the adoption process. In regards to birth parents' interests particularly, its provisions clearly advocate the protection of the wider, if not nuclear, family. That being said, non-consensual adoption orders remain problematic for birth parents because of their legal effect. The creation of an adoption order is intended to create a new family, both legally and socially. In order to fulfill this purpose, adoptive parents are given full parental responsibility and the parental responsibility of the birth parents (and all others) is extinguished.<sup>80</sup> Furthermore, adoption orders are, for the most part, irrevocable. It is these provisions that cause anti-adoption campaigners particular concern, and understandably so as parents lose the right to parent their child indefinitely. The permanence of adoption appears to leave no room for mistakes by the Family Justice System. The provisions concerning dispensing with parental consent are clearly detrimental to the rights of birth parents: how consent is dispensed with and the implications of the dispensation are considered in the next section.

### Dispensing with Consent

The concerns raised by anti-adoption campaigners are exacerbated by the dispensation of parents' consent to adoption. Consent is most simply dispensed with when the parents cannot be found or, are incapable of giving consent.<sup>81</sup> The 'incapability' this provision refers to is grounded in the Mental Capacity Act's 2005 definition of 'competence' and is subject to a high-threshold test due to the implications it has on the parent's rights. The dispensing of consent through absence or mental incapacity is rarely invoked and, more commonly, consent may be dispensed with merely on the basis that the 'child's welfare requires' it.<sup>82</sup> This provision makes parental objections irrelevant and is therefore subject to heavy, widespread criticism. For

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<sup>80</sup> Ibid s.46(1)

<sup>81</sup> ACA s.52(1)(a)

<sup>82</sup> Ibid s.52(1)(b)

example, the UK Independence Party note that ‘basic parental rights’ are infringed where ‘a child is placed with adopters, even though their parents did not consent’.<sup>83</sup> Additionally, the similarly right-wing ‘Forced Adoption’ group argues that dispensing of consent is an ‘infringement of human rights’ and ‘unjustifiable’.<sup>84</sup> At first glance, the criticisms of this provision make sense as it appears to provide the Courts with a wide discretion to arbitrarily remove the parents’ consenting rights. There are, however, a number of ways in which the parents’ wishes may be considered. The word ‘requires’ in the provision, for instance, implies that consent *must* be dispensed with to ensure the child’s welfare. In *Re P (Placement Order: Parental Consent)* [2008]<sup>85</sup> the definition of the word ‘requires’ was clarified by the Court of Appeal which held that the provision could only be satisfied where placement is imperative. Furthermore, parents are protected from the over-application of this provision through the Human Rights Act 1998. In *P, C and S v UK* [2002],<sup>86</sup> the European Court of Human Rights described adoption as a ‘grave interference’ with the right to family life that must only be used as a proportional response to the risk posed to the child under Article 8(2).<sup>87</sup> The Article 8 right to family life in relation to adoption however, is not absolute. This is because, where the adopted child has lived with their adopters for a long period of time, a new ‘family life’ may have been created with the adoptive parents. Moreover, the creation of an adoption order is reliant on the ‘significant harm’ test having been satisfied.<sup>88</sup> Thus, the provision is subject to a high-threshold test prior to its application.<sup>89</sup> In the Supreme Court judgment of the case *Re B* [2013],<sup>90</sup> this test was set out to mean that to pass threshold, a judge must be satisfied that “the child is suffering or likely to suffer

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<sup>83</sup> UKIP, ‘Families are Key to the Nation’s Wellbeing’

<<http://www.ukip.org/content/latest-news/2999-families-are-key-to-the-nations-wellbeing>>(access ed April 2nd 2014)

<sup>84</sup> Joseph (n9)

<sup>85</sup> [2008] EWCA Civ 535

<sup>86</sup> [2002] 56547/00

<sup>87</sup> European Convention of Human Rights 1950, Art. 8(2) states that “there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”.

<sup>88</sup> CA s.31

<sup>89</sup> *Re B* [2013] UKSC 33

<sup>90</sup> *Ibid*

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significant harm” and that “the harm is attributable to the care given to the child if a care order is not made”.<sup>91</sup> Thus, causation of the harm suffered by the child must be proven before a care order can be made. Finally, in the case of *Re B-S* [2013].<sup>92</sup>

McFarlane LJ further stressed that the dispensation of consent should be a thing of last resort and only used in exceptional circumstances. This case has significantly reduced the use of adoption by the courts and has instead, encouraged the use of alternative solutions, such as placing the child within the family under a Special Guardianship Order. Nevertheless, critics of the Adoption and Children Act 2002 maintain that the new law does not allow for reasonable objections by parents to be made. Instead, the ‘court will now be able to impose its view on them’ and thus, parents are caught in a position where any mistake made could lead to their children being removed.<sup>93</sup> While it is understandable that parents and campaigners may be concerned about the dispensing of consent, it is necessary for the children caught in these circumstances. In the majority of cases placement cannot be hindered by a lack of parental consent because the child’s welfare is at such risk. It is therefore a sad necessity that the parents’ rights in these cases should be subordinated to that of their child.

### The Revocation of an Adoption

The Adoption and Children Act 2002 was written with the intention of making adoptions secure and long-term. This means that they may only be revoked through the creation of another adoption order or, by the adopted child reaching maturity. In the case of *Re B (Adoption Order: Jurisdiction to Set Aside)* [1995],<sup>94</sup> Thorpe LJ explains that ‘the adopted child ceases to be the child of his previous parents and becomes the child for all purposes of the adopters’.<sup>95</sup> If we are to accept that adoptive parents should be considered the legitimate parents of their adopted child, then it logically follows that their parenthood should only be revoked through a new adoption or the

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<sup>91</sup> Ibid

<sup>92</sup> [2013] EWCA Civ 1146

<sup>93</sup> Caroline Bridge and Heather Swindells, *Adoption: The Modern Law* (Jordan Publishing 2003) p.152

<sup>94</sup> [1995] EWCA Civ 48

<sup>95</sup> Ibid



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child's adulthood, as is the case for biological parents. Adoption orders may, however, be appealed in exceptional circumstances, where it is found that there was a fundamental flaw in its creation. In *Re K (Adoption and Wardship)* [1997],<sup>96</sup> for example, a child was found under a pile of bodies in Bosnia and consequently fostered by an English family. When the family later attempted to adopt the child, knowing that the child had relatives wanting her back, the Judge dispensed with the objecting guardian's consent in an attempt to let the adoption go ahead. In her judgment of this case, Butler-Sloss LJ revoked the adoption on the grounds that 'a defect in natural justice' had occurred. This case depicts the very 'exceptional circumstances' under which an adoption may be revoked. However, in another 'exceptional' case, *Webster v Norfolk County Council* [2009],<sup>97</sup> the Court of Appeal accepted that the biological parents had suffered a miscarriage of justice, but still refused to revoke an adoption on grounds of public policy. *Webster's* case was one of undiagnosed scurvy causing their child to appear physically abused, although he was not. Unlike the case of *Re B*, however, there was not held to be a fundamental flaw in the creation of the adoption order as the judge had correctly created the order on the evidence he had at the time. These two cases make evident how rarely adoptions may be revoked. Alternatively, birth parents may apply for a residence order for their adopted child. A residence order will not revoke the adoption, but it will restore the birth parents' parental responsibility and allow the child to live with them. A residence order in these circumstances is unlikely to succeed, unless the birth parents can prove that the adoption has completely broken down.<sup>98</sup> The law faces the problem of promoting both justice and secure families. It is for this reason that parents are unlikely to successfully revoke an adoption order.

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<sup>96</sup> [1997] 2 FLR 221

<sup>97</sup> [2009] EWCA Civ 59

<sup>98</sup> *Re O* [1978] Fam 196

Problems with Adoption

Alessandra Pacchieri's 'Forced' Adoption

As previously explained, adoption law is problematic because of its interventionist nature and how it requires the dispensal of parental consent. This in turn leads to high levels of public involvement in cases which are picked up by media outlets. The case of *Re P (A Child)* [2013],<sup>99</sup> for example, concerns Alessandra Pacchieri's newborn, baby P, and a local authority's application for an adoption order in regards to baby P. This trial was presided over by Newton J who reasoned that, in this case, the creation of an adoption order would be an appropriate measure. Newton J grounded his decision in the adoption checklist as found in the Adoption and Children Act 2002, s.1(4). He began his judgment by explaining Pacchieri's history as a mother. It was no secret to the relevant parties that Pacchieri had long 'had problems with her mental health'<sup>100</sup> and her 'two previous children [...] are currently cared for by their grandmother'.<sup>101</sup> Furthermore, Pacchieri had suffered a 'long period of restricted contact [with the children] [...] both (in accordance with) the Grandmother's wishes and the Courts'.<sup>102</sup> Pacchieri's mental health problems meant that she needed extra help in her role as a mother. Under the welfare checklist it would of course have been preferable if baby P could be placed with a family member.<sup>103</sup> However, baby P's grandmother was already overstretched and felt she could not handle a child. Additionally, baby P's father had been given 'permission to intervene'<sup>104</sup> in the proceedings and had failed to show an interest. Based on the examination of baby P's family background, Newton J held that care within the family was not plausible<sup>105</sup> and that therefore, care outside the family must be considered. As an alternative to the adoption order, Pacchieri proposed that 'P would remain in foster care for approximately a year' to allow herself to show that she 'would be able to maintain her

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<sup>99</sup> [2013] CM12C05138

<sup>100</sup> *Ibid* (Newton J) [4]

<sup>101</sup> *Ibid* [6]

<sup>102</sup> *Ibid* [6]

<sup>103</sup> ACA s.(4)(f)

<sup>104</sup> *Re P* (n99) (Newton J) [8]

<sup>105</sup> ACA s.1(4)(f)

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medication and maintain a stable life'.<sup>106</sup> However, there was some concern regarding this proposal's 'timeframe and also about the durability of the mother's commitment to taking her medication'.<sup>107</sup> It was the Court's obligation to prioritise the child's welfare and the instability that would arise from intermittently placing P in foster care would not best do so. Moreover, Pacchieri's struggle with her medication implied that foster care would be necessary for longer than a year, leaving baby P in a state of limbo. The Court, in this case, willingly accepted that adoption 'represents a massive curtailment of both parents and of P's rights under Article 8'<sup>108</sup> and that, unfortunately, sometimes this curtailment is necessary to protect a child's welfare. Furthermore, Newton J repeatedly recognised Pacchieri's 'desire and wish to care for her children'<sup>109</sup> and apologised to her for 'the way in which the case has unfurled'.<sup>110</sup> From a distance this judgment appears to be an example of gross intervention by the Family Justice System into a competent woman's family life. However, upon closer inspection it is evident that this adoption order was necessary for the sake of P's welfare. Pacchieri had long been considered unable to take care of her children both by the Italian Courts and by her own family who were not able to take on another of her children.<sup>111</sup>

Alessandra Pacchieri's adoption case made headline news due to its extreme and unusual circumstances. The Daily Mail and The Telegraph were particularly vitriolic in their coverage of the proceedings and used the seemingly dramatic circumstances of the case to capture public attention. The Daily Mail, for instance, described Pacchieri as 'the mother whose baby was snatched by social workers'.<sup>112</sup> Public perceptions of social work and child protection rely on media portrayals and hence, headlines like this connect images of social workers to images of 'thieves'. Dr. Philip Mendes explains that,

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<sup>106</sup> *Re P* (n99) (Newton J) [15]

<sup>107</sup> *Ibid* [17]

<sup>108</sup> *Ibid* [15]

<sup>109</sup> *Ibid* [5]

<sup>110</sup> *Ibid* [20]

<sup>111</sup> *Ibid* [4]

<sup>112</sup> Sue Reid, 'I'll Never Forget You my Little Princess: Mother's Letter to Baby taken in Forced Caesarean' (Daily Mail, 15th December 2013)

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in the matter of child protection and adoption law, 'media coverage (particularly in the tabloid media) has been sensationalist and simplistic and characterised by [...] a search for scapegoats'.<sup>113</sup> In regards to the coverage of Pacchieri's case, social workers and adoption law have become these 'scapegoats' and, consequently, have been vilified by 'simplistic' descriptions of an 'intelligent and articulate'<sup>114</sup> woman receiving exaggeratedly poor treatment. Furthermore, Mendes argues that the media and public are 'reluctant to believe that children can be harmed by a parent'.<sup>115</sup> This belief is evident in the media portrayals of Pacchieri's case that depict her mourning her 'little princess'<sup>116</sup> and thus, frame Pacchieri as a wronged parent. Poor media portrayals of adoption appear to be deeply entrenched in modern culture. In Australia, for example, media coverage of a child protection case almost identical to Pacchieri's also portrayed social workers as 'snatching [...] a baby from the operating table'.<sup>117</sup> The similarities evident in the global media coverage of child protection cases appear to show a common political agenda by media outlets of criticising state intervention into the family. Adoption law is particularly vulnerable to being labelled as 'authoritarian and intervention[ist]'<sup>118</sup> by those wanting to limit state control. Media outlets play on this vulnerability to promote their agenda against state intervention. The portrayal of adoption law as 'evil' is not, however, beneficial to its betterment or to the protection of vulnerable children. In Pacchieri's case, for example, the media misrepresented the facts at hand and consequently constructed a misapplication of the law that may not have actually occurred. For example, The Telegraph wrote that baby P 'must be sent to live with complete strangers'.<sup>119</sup> A claim like this leads readers to believe that the law does not allow for an adjustment period between baby and

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<sup>113</sup> Philip Mendes, *Blaming the Messenger: The Media, Social Workers and Child Abuse*'

(Australian Social Work Vol. 54 No. 2 2001) 28

<sup>114</sup> Reid (n112)

<sup>115</sup> Mendes (n106) 29

<sup>116</sup> Reid (n112)

<sup>117</sup> Mendes (n113) 30

<sup>118</sup> Ibid 30

<sup>119</sup> Chris Booker, *Baby Forcibly Removed by Caesarean and taken into Care* (The Telegraph, 30th November 2013)

prospective adopters, which is untrue.<sup>120</sup> The Pacchieri coverage, in particular, is littered with media representations that do not match the facts of the case. Moreover, the coverage of the case inspired several articles to be written about other women who suffered ‘heartbreak at having (their child) snatched away with no warning’.<sup>121</sup> Consequently, following a high profile case such as Pacchieri’s, there is a ripple effect and the public’s knowledge of the law is distorted. The media fails to serve both lawmakers and the public alike through the sensationalisation of adoption proceedings by misinforming the public of their rights and the likely consequences of their actions. Anti-adoption campaigners believe too that ‘nuances may be lost’<sup>122</sup> in reporting and thus, their beliefs are not properly promoted.

### **Anti-Adoption Campaigns**

The Anti-Adoption campaigners who write about cases such as Pacchieri’s appear to oppose adoption because of a consensus that the Family Justice System has an ‘obsession with adoption’.<sup>123</sup> More specifically, campaigners use the term “forced adoption” to describe non-consensual adoption to their audience. This ‘obsession’, to campaigners, results in alternatives to adoption being underused and to adoption being misused. The long-term care alternative predominantly referred to by campaigners is that of ‘long-term fostering’ which they believe to have ‘very similar outcomes’ to adoption.<sup>124</sup> It is true that long-term fostering is an option that offers the child some sense of security while giving parents the chance to appeal the placement. However, the Adoption and Children Act 2002 sets out the child’s welfare as the Court’s ‘paramount consideration’<sup>125</sup> and thus, the care plan that is most beneficial to the child’s welfare must be chosen. Many studies comparing the short and long-term effects of fostering

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<sup>120</sup> Katy Winter, ‘*Social Workers came to take my baby when i was in labour*’ <http://www.dailymail.co.uk/femail/article-2518873/Social-workers-came-baby-l-labour-Mother-tells-heartbreak-having-daughter-snatched-away-birth-warning.html> (Accessed 27<sup>th</sup> October 2015)

<sup>121</sup> Ibid

<sup>122</sup> Hemming (n11)

<sup>123</sup> Ibid

<sup>124</sup> Hemming (n11)

<sup>125</sup> ACA s.1(3)

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and adoption have found that 'the binding nature of adoption is of deep psychological significance to the long-term foster child'.<sup>126</sup> In fact, in a contemporary study undertaken by Bohman and Sigvardson it was found that 'at 18 'maladjustment' in the fostering group was 2-3 times more frequent than among controls and in the adoption group'.<sup>127</sup> The maladjustment suffered by long-term foster children is believed to be due to them 'feeling unusually insecure and lacking a full sense of belonging'.<sup>128</sup> Furthermore, both foster carers and children alike report feeling a 'continual state of anxiety'<sup>129</sup> as a result of the lack of permanency in their relationship. These reports on the adverse effects of long-term fostering reach the conclusion that 'the ideal for children in long-term fostering is to be adopted by their foster carers'.<sup>130</sup> As adoption appears to be hugely beneficial to children, then it must be the most preferable option for children entering care. Anti-adoption campaigners do not fault the law for prioritising the child's welfare and, in fact, agree that we should explore 'how best to protect children's welfare and ensure that this is done'.<sup>131</sup> The question that appears to have been identified by campaigners is, therefore, whether adoption is used too readily by social services in situations where the child's welfare is not at risk. The anti-adoptionist distrust of the social services is understandable due to the interventionist nature of the social services' role. For example, Fathers for Justice describes the 'cruel and degrading treatment of families' by the government and social services,<sup>132</sup> while another group's entire focus is to be a 'reform movement against government power'.<sup>133</sup> John Hemming MP, a leader in forced adoption campaigning, rationalises the hatred of the social services by campaign groups by explaining that the requirement of 'independence of evidence

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<sup>126</sup> John Triseliotis, 'Identity and Security in Adoption and Long-Term Fostering' (Adoption and Fostering Vol. 7 No. 1 1983) 22

<sup>127</sup> Ibid 27

<sup>128</sup> Ibid 28

<sup>129</sup> Ibid 28

<sup>130</sup> Ibid 30

<sup>131</sup> Hemming(n11)

<sup>132</sup> Fathers For Justice <<http://www.fathers-4-justice.org/our-campaign/our-mission/>> (Accessed 28<sup>th</sup> October 2015)

<sup>133</sup> Social Services Activist Group  
<<https://www.indymedia.org.uk/en/regions/manchester/2010/11/467791.html>> (Accessed 28<sup>th</sup> October 2015)

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actually mean[s] that most of the decisions in the UK are procedurally unlawful'.<sup>134</sup> The 'independence of evidence' Hemming refers to here concerns the reliance within the Family Justice System on 'assessments by employees of the local authority' (i.e. social workers).<sup>135</sup> Campaign groups fear that those making assessments in Family Proceedings lack neutrality and hold a prejudice against biological parents.<sup>136</sup> Of course, if the social workers making assessments and thus guiding judgments do hold a prejudice against biological parents, then the campaigners' belief that adoption orders are made unnecessarily and unfairly would be entirely founded. However, the case law only cites a few instances in which the 'Court has had to address the question of misconduct by a local authority'.<sup>137</sup> A recent case, *Re Z (A Child: Independent Social Work Assessment)* [2014]<sup>138</sup> illustrates the Court's approach to unfair social work assessments. In this case, Bellamy J upheld the Father's application to obtain an independent social worker assessment due to concerns regarding the 'quality of the social work assessment and... whether [the father] has been treated fairly'.<sup>139</sup> In his judgment, Bellamy J turned to the Family Procedure Rules 2010, which restricts evidence to 'that which in the opinion of the Court is necessary to assist the Court to resolve the proceedings'.<sup>140</sup> Here, the word 'necessary' lies somewhere between 'indispensable on the one hand and useful, reasonable or desirable on the other'.<sup>141</sup> Thus, it is evident that in the majority of cases expert evidence will form a significant part of the proceedings. However, Bellamy J was also eager to note that the Court holds an overriding concern that a placement order should be a last resort. Citing Hale J in *Re O (Care or Supervision Order)* [1996],<sup>142</sup> Bellamy J elaborated that minimal intervention best protects the child's welfare. Therefore, although the Courts will be guided by social work assessments, there is an overwhelming concern that intervention should be minimised where possible. Moreover, Bellamy J accepted that social worker assessments 'must be, and must be seen to be, fair, robust

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<sup>134</sup> *Ibid*

<sup>135</sup> *Ibid*

<sup>136</sup> *Ibid*

<sup>137</sup> *Re B (Children)* [2008] EWCA Civ 835 (Wall LJ) [1]

<sup>138</sup> [2014] EWHC 729 (Fam)

<sup>139</sup> *Ibid* (Bellamy J) [134]

<sup>140</sup> Family Procedure Rules (2010), Part 25, Rule 25.1 (FPR)

<sup>141</sup> *Re P (Placement Orders: Parental Consent)* [2008] EWCA Civ 535 [120]

<sup>142</sup> [1996] 2 FLR 755

and thorough' due to their impact on outcomes.<sup>143</sup> Additionally, in *Jones v Kaney* [2011], the Supreme Court ruled that those giving assessments in Court would no longer be immune from professional negligence suits.<sup>144</sup> This judgment, alongside the recently introduced 'necessity' requirement,<sup>145</sup> illustrate that the Court accepts the likelihood of personal prejudice affecting social work assessments. It is inevitable that occasionally social workers may lack neutrality but, the Courts are prepared to overrule a social worker assessment when it is unfair.

As previously considered in the context of interventionist theory, it is relevant at this point to consider Calder's identification of the 'balance' between the public and private domains in child protection. Despite the clear opposition, which is held by campaigners and right-wing media outlets, Calder's work has the effect of making the reader question whether society actually wants less interventionism. Sociologists who have researched the practice of child protection for the most part agree that it is an area of law that 'favour[s] extensive state intervention'.<sup>146</sup> With the theories previously discussed in mind, it would appear therefore that the public tends to agree that state intervention is necessary in regards to the protection of families. In terms of family life, the public vs. private debate is particularly difficult because of its personal and intimate nature. When discussing certain aspects of the family (i.e. same-sex parents and single mothers) for instance, it seems obvious that the Lockean stance of autonomy over ourselves and our property is most appropriate to apply to the family. On the other hand, when it comes to the issue of child protection, it seems more appropriate to support the feminist perspective that a narrower private realm is more effective in protecting the vulnerable. Hence, the family is really at the centre of the public vs. private debate as it is an institution that requires several competing policies in order to best regulate it. It is because of the nature of the family that the legal and social services often find themselves in a 'no win' situation. It is argued here that this 'no win' phenomena is at the heart of the question as to whether the law is advocating child 'theft' and, that this phenomenon supports the statement presented in this article,

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<sup>143</sup> *Re O (Care or Supervision Order)* [1996] 2 FLR 755 [130]

<sup>144</sup> [2011] UKSC 13

<sup>145</sup> FPR (n130) (applied in 2013)

<sup>146</sup> Calder (n17) 750 (Quoting Fox-Harding)



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which proposes that the law in theory and practice has good intentions regarding child protection. While the social services continue to intervene into family lives, they are certain to face opposition. However, if the social services were to stop intervening, they would face uproar regarding the failure to protect children.

### Conclusion

Adoption law is inherently interventionist because of its role within the private, familial sphere. The application of adoption law fits perfectly within the Foucaultian theory of neoliberal governmentality. Governance encourages self-regulation through the formation of 'good' families but, is willing to intervene where self-regulation fails. In regards to family life, intervention is justifiable because of the perceptions of children as vulnerable and the common wish to protect them. This stance on interventionism is evident in some feminist perspectives that 'favour extensive state intervention'<sup>147</sup> and regard it as a necessary evil to protect women and child. Furthermore, the approach to adoption in England and Wales is upheld by the European Court of Human Rights, which regards adoption orders as a proportionate breach of Article 8 rights. However, the interventionist nature of adoption law also makes it vulnerable to extensive criticism by the public and media. As Mendes outlined in his article, the media relies on the role of social workers as 'intruders' to create hype and attract readers. The disdain created by media portrayals of adoption is especially evident in the Pacchieri case. This case's extreme circumstances provided media outlets and anti-adoption campaigners alike with an opportunity to depict those in the Family Justice System as 'evil'. However, although the anxieties voiced by those opposing adoption are not wholly unfounded, campaigners have failed to provide viable solutions or alternatives to adoption. Campaigners particularly demonise social workers on the grounds that they provide the Courts with prejudiced reports on parents. It is undeniable that social workers may sometimes be influenced by personal opinion. However, it is argued here that the law recognises this

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<sup>147</sup> Calder (n17)

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flaw and works to restrict unfair assessment in the Courts. Furthermore, it is unfair to condemn social workers for mistakes made by the minority. For the most part, social workers are 'praised for [their] adoption work'.<sup>148</sup> Overall, adoption law certainly does not advocate the theft of children but rather, focuses on protecting children's welfare. Child welfare is widely agreed, even by anti-adoption campaigners, to be of the utmost importance and the law should be commended in making welfare its 'paramount consideration'.<sup>149</sup> Prioritising children's welfare means that intervention is necessary and that parents' rights have to become secondary. However, the subordination of parental interests is a side-effect of the law, rather than its intention. Adoption law is likely to forever remain an area of controversy, but this can be regarded as a positive thing as critics provide the pressure needed to induce reform and further improve the law.

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<sup>148</sup> Tristen Donovan, *'Ofsted Publishes Latest Wave of New-Style Children's Social-Care Inspections'* (Community Care, 21st March 2014)

<[http://www.communitycare.co.uk/2014/03/21/ofsted-publishes-first-wave-new-style-childrens-social-care-inspections/#.Uy2HXfl\\_uZk](http://www.communitycare.co.uk/2014/03/21/ofsted-publishes-first-wave-new-style-childrens-social-care-inspections/#.Uy2HXfl_uZk)> (Accessed 2nd April 2014)

<sup>149</sup> CA s.1