



Introduction

MOSES AND OEDIPUS

The desire to save children from a bitter fate confers upon adoption an aspect of benevolence. Adoptive parents are the object of esteem rarely accorded to birth parents. That is the bright side of adoption. The dark side is the very fate from which the child is being saved – a fate thought to be an existential danger, the product of indifference and callousness or even spite and malicious intent. The roots of this equation – which lauds adoption while condemning the circumstances that result in children being placed for adoption – may be found in mythology, in tales such as those of Moses and Oedipus, who owed their lives to adoption. In both stories, the hero's genealogical ties play a prominent part, but in other respects they are fundamentally different: one concerns the wish to give a child the chance of a better life – or indeed, life itself – while the other is about the desire to control destiny and rewrite one's personal history.

The Moses legend is about a child whose mother tries to save him from death, as decreed by Pharaoh upon all sons of the Israelites. However, the Bible stresses that Moses, the father of the nation, was not entirely cut off from his roots. Pharaoh's daughter, who retrieved him from the river, recognised him as 'one of the Hebrew's children', and put him in the care of a Hebrew nursemaid (who was, in fact, his mother), and he remained with his own people until he was weaned. Only then was he taken into the house of Pharaoh, and on reaching adulthood, 'went out unto his brethren' (Exodus 2:2–11). The text is unclear as to whether Moses knew that the nursemaid was his mother, if he was still aware of his birth identity and whether, on reaching adulthood, he knew that the Hebrews were his people. However,

what is undeniable is the significance attached to the preservation of the genealogical ties in Moses' life. Today, this significance is acknowledged in what is known as 'open adoption', in which contact between the adopted child and his birth parents is not severed, and the child is not torn away from his genealogical kin.

The adoption of Oedipus was also intended to save him from death, but in this instance it is the father, the King of Thebes, who was out to have him killed, in an attempt to foil the prophecy of the Oracle that his future son would kill his father and sleep with his mother. Oedipus is therefore hidden from his parents, adopted by a royal family in another country and utterly cut off from his birth identity. His story represents the desire to control fate,¹ and although it ultimately leads to horrendous tragedy, its enormous potency appears to be at the heart of the doctrine that sees secrecy as an essential component of adoption. Accordingly, 'confidential adoption' – also known as 'closed' adoption – severs the ties between the adopted child and his birth parents, in a bid to provide a 'clean slate', as if the life of the adopted child begins with his adoption.

Adoption policy in Israel follows the Oedipal model. The Adoption of Children Law states that adoption must completely sever all ties between the child and his birth parents. His adopted identity and location must remain hidden from them, and as soon as adoption procedures are completed, he too must know nothing about them.² From the moment the court has decreed a child eligible for adoption, not only is his contact with his birth parents terminated, but his birth identity is as well. As in the case of Oedipus, hidden from his father's murderous intent, the child is completely cut off from his genealogical relations, to protect him from the threat and dangers allegedly posed by his birth parents.

The condemnation of the birth parents is even more explicit in cases where a child is put up for adoption without his parents' consent.³ This occurs in instances which, in the words of one court judgement, 'like a necklace of misshapen and defective stones strung together – are the abandonment and neglect of a child, and total failure in the fulfilment of parental duties – for no reasonable cause or justification'.⁴

To this list of grounds for adoption, another was added, namely the parents' inability to raise their child⁵ – an argument originally designed to ensure that a home is provided for children who have spent many years in children's homes or other institutions, due to their families' inability to raise them at home, or because the parents refused to put them up for adoption.⁶ Today, however, this argument is also being cited to justify the removal of children from their birth parents'

custody without the parents' consent, once it is shown that they are incapable of raising them. While this charge is ostensibly different from the 'misshapen stones' situations described above, inasmuch as it involves no 'element of culpability',⁷ the parents' 'acquittal' from such a charge is not unequivocal.⁸ While on the one hand, in the view of the same presiding judge, 'the pernicious effect of these phenomena has extended to the interpretation of section 13(7) of the Adoption of Children Law – giving rise to the incapability argument',⁹ he also pointed out that 'the root of this unfortunate state of affairs is precisely in the meaning of section 13(7), in that the particular grounds cited in section 13 of the Adoption of Children Law are nothing but instances of [it]'.¹⁰

To protect children who, in the view of adoption officials,¹¹ are in jeopardy as long as they are in the custody of their birth parents, the law sanctions the use of emergency orders. In these instances, the child is removed from the parents' home, his birth identity is changed and a temporary one given to him by the adoption officials, his location is made secret, and access to him is limited exclusively to the adoption officials, who are also entitled to hand him over to the intended adoptive family even before the court has approved his removal from his birth parents' custody. To obtain such approval, the adoption authorities must appeal to the courts no later than fourteen days after the child's removal from his parents' custody.¹² The adoption authority in Israel – known in Hebrew as Hasherut Lema'an Hayered (literally, 'The Service for [the Sake of] the Child', henceforth SSC)¹³ – represents the state, and is the body that petitions the courts for the child to be declared eligible for adoption. The courts are authorised to give such approval *ex parte*, that is, without the parents being present.

The law therefore empowers adoption officials to enforce the Adoption of Children Law, and the SSC is the only point of contact for all parties in the adoption triangle. The adoption officials – all SSC employees – act as the child's guardians from the moment he is removed from his parents' custody until the court's decision, at the state's bidding, to declare the child eligible for adoption. During this time, the child is kept behind a wall of secrecy, and access to him is permitted only through adoption officials and under their supervision.¹⁴ At this stage, the child's birth identity has already been removed, in favour of a new, temporary and confidential identity. All contact between him and his birth parents is conducted exclusively through the adoption officials, even though the latter are a party in the legal proceedings, with an interest in putting the child up for adoption. Thus, the same procedures used by adoption officials to put children up for adoption

also entitle them to portray the parents as posing a danger – not only to the court but to the child as well. The child is thus left struggling to understand why he was taken away from his parents and why his contact with them is limited to certain prescheduled times and strictly under close supervision. At this point, in effect, any reasonable doubt over the charge that the parents cannot raise their child has already been removed. They are presented as people from whom the child must be hidden, much as Oedipus had to be hidden from his father.

Although, by legal precedent, the law courts are ‘the father of orphans’¹⁵ and the sole authority in the decision to put a child up for adoption and to order his adoption,¹⁶ the law delays court intervention until *after* the child has been removed from his birth parents’ custody and handed over to the intended adoptive family. In practice, therefore, authority resides in the hands of the SSC, which operates in secret, rather than in the justice system, which is expected to operate transparently to protect the rights of all parties involved – children, birth parents and adoptive parents. Entrusting all contact between the child and his birth parents to adoption officials – who, by definition, have a vested interest in severing this contact – allows them to present matters in a manner that is calculated to sway the court’s decision. They are able to sabotage the relationship between the child and his parents, for example by controlling and policing their encounters, and by keeping secret the child’s testimony about the nature of his relationship with his parents. The restrictions imposed on the child’s contact with his parents are carried out on grounds of ‘the best interests of the child’, but in a way designed to make it a self-fulfilling prophecy.¹⁷ Indeed, so zealous is the pursuit of ‘the best interests of the child’ – a principle conceived to counter the view that a child is his parents’ property¹⁸ – that it appears merely to replace the parents’ ownership of the child with that of the state (in the guise of the adoption officials).¹⁹ However, by denying the child his right to express his views, the state defeats the ultimate purpose of ‘the best interests of the child’ principle – namely, recognising the child as ‘a person with an independent personality’.²⁰ The Adoption of Children Law in Israel²¹ does not mandate that the child himself must be represented in court as a party to the proceedings.²² Instead, he is usually represented by the adoption officials who, at the same time, are petitioning for him to be declared available for adoption.

Adoption proceedings portray the child not as an independent person, but as an atomistic entity detached from all genealogical ties and devoid of any identity.²³ Adoption policy in Israel is founded on a pointed disregard of any risk that removing the genealogical ties from

the adopted child's life may result in an irreplaceable loss.²⁴ Although there is some acknowledgement that denying the child the chance to grow up with his birth parents may have some adverse effect on him, adoption is portrayed as a fitting substitute and as compensation for that damage. This view centres on the original causes of the damage²⁵ – namely the parents' conduct and failures – and therefore does not require the child's own testimony. Thus, the state's assessment of the parents' conduct is presented as a reflection of the child's assessment of his relationship with his parents.

As previously noted, when the child is adopted, he is given a new identity, in an attempt to erase any trace of the ties he once had with his birth parents,²⁶ and the parents' very disappearance, in turn, is presented as justifying the necessity of the Gordian knot forged between the adoption procedure and eradication of the child's genealogical ties.

This book examines the proceedings of four cases that I encountered as an expert witness called upon to assess the parents' ability to raise their child, during court hearings held to approve the emergency orders and the state's petition to have the child declared eligible for adoption on these grounds (against the parents' wishes).²⁷ In all four cases, I witnessed the accounts presented by the adoption services, under the veil of secrecy imposed allegedly to protect the privacy of the children and their parents: accounts of denials that adoption entails loss; of refusing to allow the testimonies of the children involved as to the special meaning of their relationship with their parents; and of the questionable premise underpinning it all, namely that adoption is a fitting substitute for lost genealogical ties. My goal in this book is to describe the injustice inherent in the systematic and routine denial of the loss experienced by the child, and the wrong done by the muzzling of its expression in any form.²⁸

As part of the detailed description of the chain of events in each of the cases documented in the book, I also attempt to decipher the children's relationships with their respective parents, and to examine the SSC's intervention and the legal proceedings. Each case focuses on one or more of the catchphrases typically used in the adoption establishment's linguistic style of controlled expression: 'parental capability'; 'belonging' and 'continuity'; 'the wilderness generation' and 'the best interests of the child'; and 'a sacred calling'.

The term 'parental capability' is used when assessing a parent's ability to raise their child. It is a vague term, given to many interpretations,²⁹ the most common being one in which the parent's ability is presented as a fixed feature of their personal makeup. According to

this interpretation, the relationship between parent and child is unidirectional: the parent determines the child's development and the nature of their relationship. The child, in this scenario, is perceived merely as the passive object of the parent's care – and thus the significance to him of his removal from his parents may be ignored. This construct is, in Chapter 1, set against an alternative view that defines the parent's ability in terms of the solution that he finds for the conflict between the need to preserve his resources and the need to provide for his child's needs, which draws upon those same resources. This presents the child as someone who actively forms an attachment with his parent, and since this attributes equal weight to the child's attachment to the parent as to the parent's attachment to the child, it requires consideration of what removing a child from his parents means to him.

The terms 'belonging' and 'continuity' highlight the inherent paradox of closed adoption, which purports to provide continuity in the child's life while severing his ties to his birth family. The contradiction at the heart of this paradox is deliberately obscured by denying the significance of the child's bond with his birth parents, and presenting the underlying false premise that adoption is compensation for the damage allegedly inflicted upon the child by his birth parents through their parental shortcomings.³⁰ Only when the child is given an opportunity to testify openly to the loss he experiences with the disappearance of his parents from his life – for example, when he is returned to them after being removed under the terms of an emergency order, as recounted in Chapter 2 – is the singular significance of that irreplaceable relationship revealed.

The phrases 'the wilderness generation' and 'the interests of the child' have been used in relation to child welfare policy in Israel at various points in its modern history, and feature in the case described in Chapter 3. In the pre-state period and in the first years following independence, the phrase 'the wilderness generation' was a central plank in the country's approach to the role of parents in their children's life, echoing the ethos that the new society should be built not by those who had wandered about in the proverbial wilderness (as in the biblical story of Exodus), but by those who, unlike their parents, were born free – that is, liberated from the shackles of exile. In the 1970s, this term was phased out in favour of the phrase 'the best interests of the child', but the underlying ideology behind the two expressions is the same: protecting the child means protecting his interests, rather than his relationship with his parents. Both terms are evident in the closed adoption approach.

Preceding the inclusion of Chapter 3 in the book were legal proceedings that made me realise the need for a distinction between ‘secrecy’, which entrenches the state’s ownership of the child, and ‘privacy’, in the sense of protecting the relevant parties involved from public exposure. To this end, I present Chapter 4 as an interlude discussing secrecy as a construct; the relationship between it and the need for open government in a democratic society; and how all these issues are reflected in adoption policy and in the legal proceedings concerning whether the adoption case described in Chapter 3 could be made public. The general method used in the book – of devoting each chapter to a detailed description of a single chain of events – is discussed here in terms of the potential conflict between this method and the protection of privacy.

The term ‘sacred calling’ is usually cited in response to any criticism levelled at the SSC staff, to suggest that such criticism is heretical. In reality, however, the term is a faithful reflection of the SSC’s current mindset and procedures, which are designed to safeguard its authority. Chapter 5 describes a case that reflects the adherence of adoption officials to the belief that birth parents and adoptive parents must be strictly segregated – even when the adoption is said to be open – and the zealotry with which this directive is observed, as though it were a religious ritual aimed at consecrating traditional customs, even at the price of silencing the child’s voice.

The book concludes with an epilogue that juxtaposes two moral viewpoints, one drawn from a moral judgement on the issue of parent culpability, and the other about concern for others, aimed at preventing unnecessary suffering and loss – first and foremost of the child, but also of the parents. It is the latter which this book aims to advance in an attempt, as Adi Ophir put it, ‘to disrupt the order of production and distribution of these evils’.³¹

Notes

1. Mili Mass, ‘Adoption in the Bondage of the Oedipal Myth’, *Journal of Psychiatry and Law* 22 (1994), 263–67.
2. Civil Appeal (CA) 2169/98, *Anon v A-G*, Verdict #53 (1) 241, 264 (1999):
 ‘The general rule is the “full” or “closed” adoption.’ [However, the possibility of an open adoption was present already in the first Adoption of Children Law in Israel, 5720/1960 henceforth, Adoption of Children Law, 1960), and is preserved in the current version, as amended in

1981. It is known as 'Restricting the results of the adoption' – Adoption of Children Law, 5741/1981 (henceforth, ACL), 16a].
3. ACL 13(1–6), 8.
 4. Supplementary Civil Proceedings (SCP) 7015/94, *A-G v Anon*, Verdict #50 (1) Repeat Trial (RT), 113 (1995).
 5. This was added to the ACL 13(7); Nili Maimon, *Child Adoption Legislation* (Tel Aviv: Israel Bar Association, 1984), 321–22 [Hebrew].
 6. Report of the Adoption of Children Law Inspection Committee, Jerusalem (Justice Ministry, 1979).
 7. CA 418/88, *Anon v A-G*, Verdict #44 (3) 1, 9 (1990).
 8. When speaking about an unidentified parent, I have chosen to use the masculine form, although the role is usually associated with the mother. Since the mother is generally cast as the one bearing responsibility and blame, the masculine form helps to underline that the father, too, is part of the parental equation.
 9. SCP 7015/94, *A-G v Anon*, 114.
 10. *Ibid.*
 11. The term 'adoption officials' is henceforth used in this book as shorthand for welfare officials operating under the ACL. Since all adoption officials in Israel are women, I refer to them throughout the book using feminine pronouns.
 12. Provision for removal orders of this sort is made both in the Youth (Care and Supervision) Law, 5720/1960 (henceforth, Youth Law) 11a, and in ACL 12c. The licence given by law, as an emergency procedure, for adoption officials to transfer a child to an intended adoptive family even before the issue has come before the courts is designed to spare children unnecessary upheavals should they be declared eligible for adoption; Maimon, *Child Adoption Legislation*, 191.
 13. Not to be confused with 'Child Services', which is a separate and distinct entity. The Service for the Sake of the Child is the Israeli Adoption Authority in all but name.
 14. Maimon, *Child Adoption Legislation*, 196–97.
 15. CA 488/77, *Anon v A-G*, Verdict 32 (3), 421, 437 (1978):

The father of orphans – in terms of the authority to make a final determination of their future – is the court of law and the court of law alone: this must not be given to anyone else, however good their intentions, lest they establish facts on the ground that force our hand.
 16. ACL 16.
 17. 'Because the *raison d'être* of the state's involvement is to "ensure the best interests of the citizen", the benevolent state feels morally justified in governing the private lives of its citizens.' Signe Howell, *The Kinning of Foreigners: Transnational Adoption in a Global Perspective* (New York: Berghahn Books, 2006), 10.
 18. Pinhas Shifman, *Family Law in Israel*, Vol. 2 (Jerusalem: The Sacher Institute for Legislative Research and Comparative Law, Hebrew University Faculty of Law, 1989), 218 [Hebrew].

19. 'Experience has shown that when the parents' rights are expropriated, they are transferred not to the child but to the state'. Betty Reid Mandell, *Where Are the Children? A Class Analysis of Foster Care and Adoption* (Lexington, MA: Lexington Books, 1977), 64.
20. Shifman, *Family Law in Israel*, 218.
21. ACL 2.
22. On the child's participation in legal proceedings that deliberate the relationship with his parents, see Mili Mass, 'When Family Relationships Stumble into the Finality of Legal Proceedings', *IDC Law Review* 18 (2014), 323–62 [Hebrew].
23. It is interesting to note that this practice is attributed to transnational adoption: 'The child is denuded of all kinship; denuded of meaningful relatedness whether its destiny is known or not. As such, the child is the example *par excellence* of the autonomous individual – so central in contemporary Western thinking. But this also, paradoxically, renders him or her a non-person; in a sense, non-human'. Howell, *The Kinning of Foreigners*, 4.
24. On the meaning of the term 'loss', see Adi Ophir, *The Order of Evils: Toward an Ontology of Morals*, trans. Rela Mazali and Havi Carel (New York: Zone Books, 2005), 89. On the presence of loss in the lives of adoptees, see David M. Brodzinsky, 'Stress and the Coping Model of Adoption Adjustment', in David M. Brodzinsky and Marshall D. Shechter (eds), *The Psychology of Adoption* (New York: Oxford University Press, 1990), 3–24; Harold D. Grotevant, 'Coming to Terms with Adoption: The Construction of Identity from Adolescence to Adulthood', *Adoption Quarterly* 1 (1997), 3–27.
25. Ophir, *The Order of Evils*, 129; Mili Mass, 'Baby at a Crossroads: The Dispute over the Meaning of Adoption', *Tel Aviv University Law Review* 31 (2008), 219–40 [Hebrew].
26. In Israel, adopted children are issued new birth certificates attesting to their birth to their adoptive parents (according to correspondence with the director of the Population and Passport Registry of the Ministry of the Interior, 21 December 2008). In a written reply from the director of the Child Services Agency on 27 January 2009, it was further clarified that:
 - 1) A new birth certificate is indeed issued to the adoptee, as set out in section 20 of the Population Registry Law of 1965.
 - 2) The original birth certificate is considered null and void. The Ministry of the Interior's position is that it will not provide any document that is considered invalid.
 - 3) It should be noted that, under the ACL 30b: 'A welfare official may allow an adoptee aged eighteen and above to examine their details in the Registry...'. The adoption file includes identifying details of the biological parent.

27. The names of those involved have been changed and identifying details obscured, including details of prior verdicts on these cases, without affecting the substance or significance of the testimonies.
28. Ophir, *The Order of Evils*, 165.
29. According to the courts, the wording of the argument set out in ACL 13(7) (which allows a child to be declared eligible for adoption even without the parents' consent, on grounds of their parental incapability) is insufficiently clear. CA 418/88, *Anon v A-G*, 5, and Chapter 1.
30. On the issue of damage and compensation, see Ophir, *The Order of Evils*, 128.
31. *Ibid.*, 14.