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Adoption and the Law in Vermont, 1804–1863: An Introductory Essay

[Between 1804 and 1863] the Vermont legislature wrote laws and the state courts delivered judgments that steadily brought adoption under the law; more fully defined the procedures, obligations, and expectations of adoption; and finally transformed it from an informal, spontaneous act into a deliberate, contractual arrangement.

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In 1804 William Fisher of Orwell, his wife, Betsy, and their privately adopted son, Abraham Wilson, presented a petition to the Vermont General Assembly requesting the legislature to legalize Abraham's adoption.¹ Fisher and his wife settled in Orwell in 1784. He became a farmer and with his fellow citizens took the freeman's oath in 1787.² He joined the Baptist church, and from the tone of his petition it seems that he was a devout and active member.³ Fisher was twenty-seven and his wife twenty-four years old when they arrived in Orwell.⁴ After four or more years of marriage, in about 1788, they were still childless. In those days this would doubtless have led them to wonder, if not worry, about permanent childlessness. About that time a young woman brought a baby boy to their door.

Fisher's language and even its crude and phonetic misspelling add power and depth to his message, which conveys a sense of genuine decency. After the formal address customary in a petition, Fisher informed the General Assembly that "your petitioner has been married upwards of Twenty years but has not had the fortune to have an heir Spring from his own Lines [loins]" and "that about Sixteen years agoe things wors soe ordred in the Corse of providence that there Came a yong woman

to your petetioners hows with a yong Child about a yeare And a half old." The young woman informed him that her husband, Abraham Wilson of Bennington, the father of her child, had deserted her, that she had not heard from him and did not expect to hear from him, and, further, "that hur fortune wors low in the world and that she wors obliged to Work out for her living which made it very bad for hur[;] therefore she wished to give the yong Child to your petetioner for his own son and wished likewise to have his name Calld Abraham Fisher instead of Abraham Wilson."

The petition continued the story:

therefore your Petetioner Did take the above mentioned Child and as faroes [pharaoh's] Daughter brought up mozes And nursed him up for her own son soe your petetioner has brought up this yong Child And nursed him up for his own son and now your petetioner feeling him self under the strongest obligations to bee a faithful parent (as the Child has noe other Parents to Depend on for his mother Died in a short time after she left the Child with your petetioner[]) and now he is about eighteen years of age and allways has gone by the name of Abraham Fisher Ever sen he lived with your petetioner.

In conclusion Fisher asked that the child's name be changed by law to Abraham Fisher and "that he shall Bee as lawful an heir to the Estate of your petetioner as any Child what Ever is to his own fathers Estate unless Cut off by Will."

The General Assembly granted these requests and thereby passed its first special act concerning adoption. It provided that Abraham Wilson be known as Abraham Fisher "as tho' his name had been originally Abraham Fisher" and that he be the heir at law of William Fisher as though he had been his legitimate child, "any law, usage or custom to the contrary notwithstanding."⁵

There are in William Fisher's petition glimpses of the spontaneities and informalities of adoption in the early years of statehood. Only a deep desire for children could have allowed him to take in as "his own son" a stranger's infant without regard to the boy's origins. The little that Fisher knew about those origins as well as inevitable suspicions about them made no difference, though he was an elder in the Baptist church. He and his wife had no child and wanted one. Providence offered him this one, and he took him in. That his desire for a child was originally a matter of profound feeling was also evident from his determination to be a faithful parent by giving the child his name and making him his heir.

This petition also expresses a genuine compassion for those in trouble. The mother and infant were helpless. Disaster, illness, and early death were the common lot in the days of the early settlements. They

created a community of trouble. William and Betsy Fisher spoke for that sense of community by giving shelter to mother and child and adopting the child.

William Fisher's petition is the first document of its kind in Vermont. It shows us the procedures and expectations of adoption arranged between individuals with little involvement of law or government. It also shows us the limitations of such arrangements and the issues that remained unresolved so long as the state remained uninvolved in the contract.

ORIGINS OF ADOPTION, TO 1853

Adoption by and large arose out of the spontaneities of American life. English common law and consequently colonial law failed to treat it; therefore the independent states had no tradition to follow in the matter. Of course the Greeks and Romans in ancient times employed adoption on a considerable scale; Roman emperors even adopted sons to be their successors.⁶ Modern continental Europe practiced adoption in accordance with the Code of Justinian, which prevailed long after the fall of the Roman Empire. But the English were not heirs of Justinian's Code and substituted for its provision no action of their own. In fact, there was no general adoption law in England until 1926.

Vermont, in contrast, passed its first general adoption law in 1853, only two years after Massachusetts passed the first such law enacted by any American state.⁷ By that time Vermont had been passing acts completing private adoptions for almost half a century and doing so at an accelerating pace. When William Fisher presented his petition, a natural parent could transfer to another person both authority over and responsibility for his or her child, without legislative or judicial sanction. But this private process could not give children the names of their adoptive parents or grant them inheritance rights in case of intestacy. These two alterations came about only by private act legislation.

Over the next sixty years, the Vermont legislature wrote laws and the state courts delivered judgments that steadily brought adoption under the law; more fully defined the procedures, obligations, and expectations of adoption; and finally transformed it from an informal, spontaneous act into a deliberate, contractual arrangement. In 1853 the legislature established an alternative method of complete adoption within the law, although it retained the still largely preferred private process with private act legislation. Ten years later, however, the legislature made the general adoption procedure described in the act of 1853 obligatory, and private procedure and legislation ceased.

ADOPTION LAW AND PROCEDURES BEFORE 1853

The first legislative act altering the name of an adopted child and constituting him or her heir at law—thus completing the adoption, as it were—was passed in 1804.⁸ This and similar future acts were introduced in response to petitions from foster parents to the General Assembly. Many of these documents up to 1835 have been preserved among the *Manuscript Vermont State Papers*.⁹ Like William Fisher's document, petitions for adoption usually contained a brief history of the child involved, thus constituting, with the special acts themselves, the major sources for any consideration of adoption during the early years. These documents leave no doubt that apart from change of name and inheritance rights, adoption was a private arrangement. Indeed the petitioners often specifically applied the very term *adoption* to such arrangements, even though the agreement itself did not constitute complete adoption as it is now understood.

One of the earliest petitions, presented in 1810, makes these aspects evident. It sought a change of name and inheritance rights for one Hiram Bigelow and related his history as follows: "while an infant being deprived of his mother by death his father gave him to said [Ephraim] Strong who having no children adopted him as his own son."¹⁰ A petition to the legislature in 1824 is similarly revealing. It declared that about seventeen years previous, Francis and Sally Kidder "took into their family and adopted as their own son an infant child . . . Norman Randolph Kidder whom they have ever since kept, supported and educated as their own son."¹¹ In 1834 Silas and Mary Earl appealed to the General Assembly along the same lines. Their petition reported that "they have adopted in their family and under their care a child by the name of Aaron Aldrich which was given them by his parents when an infant as their own child."¹²

From these and other documents, it is clear that at this period the first phase of adoption was a private matter. Custody of a child could be transferred by an agreement between the natural and the adopting parents without public sanction or supervision and without even public record. Nor was there any provision in the law that such an agreement be put into writing. It seems probable that some of them were set down on paper, although extensive if not exhaustive search has not so far discovered any such document. Yet this is understandable in view of the delicacy of the matter and the reticence of the times.

That these private agreements were not brought into question by the legislature in the years before 1853 appears certain. During this period, with only one exception—and that early, in 1815¹³—the special acts of legislation altering names and granting inheritance rights made no pro-

vision at all for custody of the child or for the rights and obligations that accompanied it. Indeed, on one later occasion the legislature ignored the request contained in another petition that sought confirmation of custody and its authority and duties.¹⁴ The legislature thus clearly confined itself at this time to the completion of the adoption process and by implication accepted as valid the essentially private undertaking that always preceded its complementary action.¹⁵

The Supreme Court of Vermont affirmed the lawfulness of such a private proceeding. In a case decided in 1866 but concerned with an adoption that took place in 1848, the court set forth the basic assumptions that sanctioned this private procedure. It cited a Massachusetts case as precedent and endorsed its declaration that as to children the "father . . . has the legal control of their persons and the right to their services." He thus could, in the words of the court, "emancipate" his child from his own control by consenting to the child's underage marriage as well as to his or her adoption. In the case of adoption, although the court did not use that term, it declared that "the new relation may be contracted by his parents for the infant." In other words, the father, who had legal control of the child, could by emancipation transfer that control to others. In ruling that this transfer must be total, the court revealed the nature of adoption: "in order to constitute emancipation of an infant it must appear that his parents have absolutely transferred all their right to the care and control of the infant: and all their right to his services, and that the person to whom such rights are transferred has accepted the infant as his own and agreed to stand in loco parentis."¹⁶

TERMS OF ADOPTION, RIGHTS, AND DUTIES, 1804–1853

There is no ground to doubt that under the private agreements the foster parents viewed the child as already fully and permanently belonging to them. The petition ordinarily did not describe their obligations in detail but simply mentioned such arrangements as making the child "their own." A few, however, spelled out the meaning. For example, in his 1831 petition seeking a change of name and inheritance rights for Curtis Flint, a minor, Harry Cary declared that Curtis had been given to him and "Holly Cary his Wife to bring up as their own child; to be dieted, clothed, Scholed, nursed and Doctored as if the said Curtis was the legitimate child of the said Cary and his Wife; in bringing to the age of twenty one years if the said Curtis shall live so long."¹⁷

The petitions indicate—no doubt accurately so—that natural parents gave their children up for adoption mainly because of poverty. One parent might desert the family or die and the remaining one would lack the means of caring for and supporting a child. On occasion a couple

would produce more children than they could support and would arrange for the adoption of one of them.¹⁸ Although conclusive evidence is usually lacking, it seems more than probable that mothers frequently gave up their illegitimate children.¹⁹ Special legislation dealt early with the adoption of illegitimate children by their natural fathers. In 1817 the legislature passed a private act legitimizing a son already possessed of his father's name, entitling him "to all the rights and privileges of nurture and heirship . . . as though he had been born in lawful wedlock."²⁰ In other words, this act brought about the complete adoption of the child by his natural father.

Five years later, in 1822, the legislature passed a general law greatly facilitating the procedure in such cases. It enabled the fathers of illegitimate children to adopt and legitimize them without special act of the legislature. This law was the first general statute with respect to adoption and was, of course, permanent. It provided that any such father "with the consent of such child or its guardian if under age" might "make an instrument in writing . . . attested by three credible witnesses and by him acknowledged before the judge of probate of the district in which he resides, declaring that he adopts, legitimates, and renders such child capable of inheritance." Once the clerk registered this instrument in probate court, "such child shall, thereafter, be considered, as respects such father legitimate and capable of inheritance; and the same rights, duties and obligations shall exist between such father and child, as if born to him in lawful matrimony; unless such child shall within one year after coming of full age, enter, in the probate office aforesaid, his or her dissent to said adoption, and in case such dissent be entered, said adoption shall be void."²¹

As early as 1822 the special acts for public registration required the consent of the foster parents. At first the consent pertained only to the granting of inheritance rights, not to the change of name, and was recorded in the probate court. From 1828 through 1840 no inheritance rights were granted. Consequently, of course, no question of registration of consent to such a grant could arise in those years. In 1841 the grant of inheritance rights was restored, and the special act of that year contained a requirement that consent be registered in the probate court.²² Following that year, however, the special acts included provision for the registration of the consent of the foster parents to the whole act—change of name as well as inheritance rights. Such registration was to occur at the town clerk's office of their place of residence. In some cases the registration of consent, upon which the validity of the special act depended, was required within one year of its passage in the legislature, while in others there was no time limitation at all. This system of registration

continued through 1862, even though the general act of 1853 established an alternative adoption procedure that was to take place before the probate court.²³

Although provision was thus made in the special acts for the consent of the adoptive parents, none was made for the consent of the child.²⁴ Nor indeed was there at this time any provision in the law requiring the child's consent to the private aspect of adoption—the original transfer of the child from the natural to the foster parents.

From 1828 through 1840 no inheritance rights were granted by the Vermont legislature under special act. In the former year the governor and council suddenly and unaccountably made a volte-face and rejected a special bill from the assembly. In doing so, they declared that "the Constitutional powers of the Gen'l Assembly do not authorize the passage of a law making one individual the heir at law to another."²⁵ This was an extraordinary decision in view of the fact that the governor and council had approved the granting of inheritance rights for almost twenty-five years. The General Assembly, though it possessed and had on occasion used the power to override the governor and council, failed to do so on this occasion. From the earliest days the assembly showed a tendency to defer to the governor and council, particularly in matters of law.

The 1836 amendment to the Vermont Constitution, which abolished the council and established the Senate, eventually paved the way for the renewal of special acts granting inheritance rights. In 1841 the assembly passed an act including such a grant. The Senate at first rejected it, as the old council had done. But this time it was the House that insisted and the other body that receded from its position.²⁶ Thereafter the legislature continued to pass such special acts until it put the whole matter of adoption completely out of its own hands by the passage of the general laws of 1853 and 1863.

THE GENERAL ADOPTION LAW OF 1853

In 1853 the Vermont legislature passed a general adoption law.²⁷ This was not a substitute for the old system of private adoption completed by special act but an alternative to it. Both the old and new procedures operated at the same time. Not until ten years later did the legislature definitively abandon the old procedure and establish the general law as the sole method of adoption.

The major innovation under the new system was that adoption could be performed and completed without the passage of any special act of the legislature. If certain simple conditions were met, including statements sworn and recorded before the probate court, the adoption became automatic. This eliminated the obstacles involved in obtaining the passage of a private bill as well as any discretion that might refuse such passage.

Although the first section of this law applied to the adoption of adults, I consider here only the provisions concerning the adoption of children. The adoption of adults, apparently not uncommon in the middle of the nineteenth century, has since become relatively more rare and certainly of much less interest and concern. It is now an idiosyncrasy, not an institution.

The qualifications for foster parents were simple. Any single person, man or woman, and any married couple were free to adopt a child, provided he, she, or they were of full age and sound mind. A married man could adopt a child on his own and apart from his wife, but a married woman could not do so on her own and apart from her husband. Foster parents were, as would be expected, most often married couples, generally without children of their own.²⁸ But there were also instances of men alone adopting children and a few cases of women doing so.²⁹

The law also described in detail the procedure involved for the prospective foster parent or parents. Any qualified person wishing to adopt a child was required to declare "by an instrument in writing . . . attested by three credible witnesses, and by him acknowledged before the judge of probate of the district in which the minor shall reside, . . . that he adopts such minor as his child and heir at law . . . and such person shall, in the said instrument designate the name which he wishes such minor thereafter to bear, and shall cause such writing to be recorded in such court." Despite the language, this procedure of course applied not only to men but to married couples and single women as well.

The new law also made innovation in establishing orderly consent in behalf of the child. As mentioned earlier in this article, the system of private adoption completed by special legislative act included no provision for such consent. The act passed in 1822 establishing procedure for the adoption of illegitimate children by their natural fathers did make such provisions,³⁰ but there was none otherwise. The function and procedure of the act of 1822 was similar to those of the general law of 1853 and may well have supplied the precedent for it. The general law clearly sets forth the procedure for consent.

The parents or parent, or guardian of such minor, together with such minor, if of the age of fourteen years, shall, by a like instrument of writing, . . . attested by three credible witnesses, and by them respectively acknowledged before the same judge [i.e., of probate] and recorded in the same office, declare their consent to such adoption and change of name. If the said minor has no parent living and no guardian, the probate court shall appoint some suitable person to act as guardian of said minor in the matter of said adoption.

There was here provision not only for consent in behalf of the children, then, but also for the consent of the children themselves if fourteen years

or over. This requirement represented an even more significant step than consent in the children's behalf. The children's own feelings had in principle been recognized for the first time as relevant to the adoption and a matter of law. The new statute also changed the way foster parents formally established a new relationship with their adopted child. Whereas formerly this was done by private and extralegal agreements between the natural parents and the foster parents, now it became public and a matter of law. The 1853 statute thus not only declared that a child adopted under its terms would be known by the new name thereby designated and be heir at law of the adopter but also that the adoptee would be the adoptive parent's "child" and that "the same rights, duties and obligations shall exist between the parties as if the minor so adopted had been the legitimate child of the person so adopting" the child.³¹

Other incidental provisions deserve brief mention. The law enjoined a judge of probate to require the adopting parent to publish notice of the adoption for three successive weeks in a local newspaper. The judge was also required to make annual reports to the secretary of state of all adoptions and changes of name under the act, these reports to be published in tabular form with the legislative acts of each year.

In later years there was also a liberalization of the procedure for completing adoption. Thus by enacting the general law in 1853, the legislature made it possible for complete adoption to be obtained by proceedings before the probate court without the passage of private act legislation. Doubtless this enactment was in considerable measure due to the legislature's desire to be free of the burden of such legislation and to end its responsibility for what was in reality an administrative or judicial matter and not a legislative one. Be that as it may, the probate court proceedings avoided the problems and obstacles inherent in all private act legislation. Furthermore, the law avoided the possibility of a legislative failure or refusal to act in any particular case for any or no reason.³² Under the new law the probate court could not fail to act and could not refuse to act except on certain limited grounds. In later years the legislature went further to liberalize the procedures for completing adoption.

NUMBER OF ADOPTIONS BEFORE 1863

We cannot obtain an exact number of private adoptive agreements that took place prior to 1863, as no public records for these had to be kept. We can assume that there were more of them (probably a good many more) than the acts of special legislation granting a change of name and inheritance rights, which completed the process.³³ The desire for secrecy must have deterred some Vermonters from seeking the passage of special

legislation. The social and political influence necessary for procurement of an act of the legislature, as well as the need to know the law, must have deterred some foster parents, and those who adopted children may not have wanted to complete the process to the point of identity of name or inheritance rights. In several cases many years passed between the original adoption and the petition by foster parents for its completion. This strongly implies a reservation of judgment on their part as to how the relationship would work out.³⁴ Moreover, the completion of adoption was not required by law. Some parents doubtless had no desire for it in the face of an unhappy relationship with the child as the years had passed.

Indeed, not even the number of adoptions of children completed by special legislative acts can be precisely determined. Similar acts were passed in behalf of adults. After 1835, when the petitions are lacking, these acts cannot be distinguished in the records from those in behalf of children. Furthermore, for a time the special acts completing adoptions cannot be separated from those for simple change of name.³⁵

We may, however, hazard an educated estimate of the figures. From 1804 through 1835 about twenty-five adoptions were completed.³⁶ For the years 1835 to 1841, the number can only be estimated as between five and ten. From the latter year through 1852, there were possibly 115 and for the next ten years, up to 1863, about 185.³⁷ If a necessary discount for adult adoptions is taken into account, there were thus in the general vicinity of 300 adoptions of children completed by special act between 1804 and 1863. The general public system of complete adoption established in 1853 doubtless added many more to this figure, but we can know these only by consulting probate court records.³⁸

It may properly be noted here that the reports for just two adoptions were published with the legislative acts during the years 1853 to 1863.³⁹ It seems the secretary of state received these reports and no others, since the two alone remain on record.⁴⁰ It is, of course, possible that only two adoptions took place. But it is equally possible (and more likely) that others were simply not reported. If so, it would not be a unique occurrence in the history of the relations of the county and local officials with the state. Without searching the records of all the probate courts, the historian can make no conclusive statement, and even such a search might be open to question in view of the possible loss or destruction of records.

It seems safe to assume that whatever the final figure might prove to be for adoption under the general law of 1853, it did not constitute the major share of the adoptions completed in 1853-1862. As already noted, 185 were brought to fulfillment during these years by special act in accordance with the alternative method of private adoption. Furthermore,

this was a substantial increase over the previous twelve years, during which only about 115 were completed.⁴¹ The old procedure certainly provided a purely private arrangement as far as custody was concerned and was free from public attention and scrutiny. Doubtless some foster parents preferred such a system, while others were reluctant to put a child through a public procedure in their own general vicinity. The private legislation was a more distant process and could be accomplished at a later and possibly more appropriate time.

ADOPTION LAW OF 1863: THE END OF PRIVATE ADOPTION

As the number of adoptions increased, the need for further refinement of the law became more obvious. In each of the three years prior to 1863, the General Assembly passed private acts of legislation in behalf of about twenty foster children—a total of about sixty adoptions completed in this relatively brief time. Adoption had thus ceased to be a rare and incidental matter and had become a practice of such proportion as to call for public consideration. In short, it had become a public issue—surely not a major one or one in great controversy, but an issue nevertheless.

A fundamental change in the matter of adoption came about in 1863, when the legislature passed the General Statutes of the State of Vermont and included verbatim the provisions of the general adoption law of 1853, with the addition of two amendments.⁴² One allowed adopters to choose whether or not they would change a child's name.⁴³ The other—and this was far more significant—declared that “all adoption, with or without such change of name, shall hereafter be made agreeably to and under the provisions of this chapter.” In other words, the legislature abolished the old system of private adoption completed by special legislation, which had prevailed for over half a century. All adoptions would in future be in accordance with statutory provision.

There were other developments. The statute finally established the right of foster parents to make their adopted children their heirs at law. For almost a decade and a half, as we have already seen, the opportunity to do so had been denied. By the 1840s it had been reaffirmed, and an essential element in full adoption was put beyond question. In all cases of intestacy, the adopted child was henceforth the equal of the natural legitimate child.

In addition to these liberalizations, the law of 1863 made obligatory some conditions and requirements for adoption first introduced in 1853. Among these was the requirement of explicit and written consent to adoption by children fourteen years of age or older. In principle, this placed a limit on the power of the father to dispose of a child. Furthermore, the legislation gave new thought to the protection of orphans. If the child

to be adopted had no parent or guardian, the probate court was directed to appoint a suitable person to act as guardian in the matter.

The law of 1863 inaugurated certain conditions and restrictions for adoption. The early procedure had imposed no restrictions at all concerning who might adopt a child and prescribed no limits as to age or mental condition; persons under age and under par mentally could be given a child in adoption. The new procedure prevented this for the future, providing that only a person of "full age and sound mind" could adopt. Although for the most part birth records or other evidence could determine the age of an adopter, the judge of probate would presumably have to decide the question of soundness of mind. It was on this limited ground alone that a probate judge could refuse to sanction a proposed adoption.⁴⁴ And it was on this ground, too, that the discretion of the probate court in matters of adoption first emerged.

Other new requirements established in 1853 and confirmed in 1863 had more profound implications. Before 1853, full adoption included two steps: the arrangement of custody by private agreement and then at a later time (often much later) the grant of change of name and inheritance rights by special act. Under the general laws of 1853 and 1863, however, custody, name, and inheritance rights came together in a single procedure. In other words, adoption became a single act. Custody of a child could no longer be obtained alone. To be sure, the general law of 1863 allowed foster parents to omit the change of name for the child, but inheritance rights had to be included.⁴⁵ In order to have custody, foster parents had to make children their heirs at law; they could no longer fail to act at all or wait ten or more years before committing themselves to the children in this fundamental regard.

Furthermore, for the first time adoption was given legal status and definition. Custody was no longer left to private agreement or contract. Both the act of 1853 and that of 1863 declared that "the same rights, duties and obligations shall exist between the parties as if the minor so adopted had been the legitimate child of the person so adopting him."⁴⁶ A written instrument of adoption was required that bound the foster parent—and the child—to the terms of this definition. That instrument was, in contrast with previous practice, executed before a witness and made a public record. Adoption, once largely private, thus became more subject to public scrutiny and more directly subject to public authority. As a great legal reference work has expressed it, it became in this way "a statutory status rather than a contractual relation."⁴⁷

By the end of 1863, adoption in Vermont, once a private agreement, had become an institution. The spontaneous acts of charity and community glimpsed in William Fisher's petition had in good measure mi-

grated from the private to the public realm. In so doing, adoption freed itself from some arbitrary restrictions and, most important, from the discretion of legislators or executives who could act or refuse to act for reasons known only to themselves. As it came into more frequent use, adoption came under increasing public scrutiny. In the end, to free themselves of the tedious and burdensome task of deliberating and acting on each case, the legislature gradually developed uniform standards for limits, restrictions, protections, and obligations. By the end of the period under study, adoption had been legally defined—publicly established—and could be legally redefined. The procedures and safeguards written into law over sixty years after 1804 made adoption a free and responsible expression of the public will to protect the unprotected and a public way to guarantee the safety and security of adopted children and their new parents.

NOTES

¹ For the full text of this document, see *Manuscript Vermont State Papers*, vol. 45, 77.

² See Doris S. Bishop, comp., *A History of the Town of Orwell, Vermont* (Orwell, Vt.: Town of Orwell, 1963), 13, 19–21, 36.

³ Abby Maria Hemenway, ed., *The Vermont Historical Gazetteer*, vol. 1 (Burlington, 1868), 74, indicates that either William Fisher or his brother Ephraim was an elder in the church and at times served in turn with other elders as minister when no regular one was available. But other sources do not confirm this.

⁴ Vital Records Office, Public Records Division, Middlesex. The death cards for William and Betsy Fisher give his age at death in 1829 as seventy-two and hers in 1820 as sixty.

⁵ For the full text of this act, see *Laws of Vermont*, 1804, 74–75 (2 November 1804).

⁶ For a brief discussion of adoption in ancient Greece and Rome, see Nuria Denis Fustel De Coulanges, *The Ancient City. A Study on the Religion, Laws and Institutions of Greece and Rome* (New York: Doubleday Anchor, 1956), 54–56. For reference to an adoption among the Vikings in the eleventh or twelfth century, see H. R. Lyon, *The Vikings in Britain* (New York: St. Martin's Press, 1977), 116.

⁷ See Lorenzo D'Agostino, *The History of Public Welfare in Vermont* (Washington, D.C.: Catholic University of America Press, 1948), 164.

⁸ *Laws of Vermont*, 1804, 74–75 (2 November 1804).

⁹ Secretary of State's Office, Montpelier, Vermont.

¹⁰ *Manuscript Vermont State Papers*, vol. 48, 37.

¹¹ *Ibid.*, vol. 57, 177.

¹² *Ibid.*, vol. 63, 187.

¹³ See *Laws of Vermont*, 1815, 164–165.

¹⁴ For this petition, see *Manuscript Vermont State Papers*, vol. 61, 27. At the time and after the passage of the general adoption law of 1853, three of the special acts—one passed in 1853, one in 1856, and the last in 1861—established between the parties in whole or in part the authority, duties, and obligations that in other cases were constituted by private agreement. The general law of 1853, as will be seen, simply provided a public alternative to the old private system of adoption. These three special acts—for only five out of the 185 persons favored by such action during 1853–1862—were in all probability simply in imitation of the provisions of the general law for public supervision on the whole matter of adoption. In any case they constituted no substantial denial of the validity of the private agreements. For these acts, see *Laws of Vermont*, 1853, 196; 1856, 202–204; 1861, 167–168.

¹⁵ In one special act the legislature referred to the person for whose benefit it was passed as an “adopted son.” The inference is clear as to the validity of the previous private agreement. For this act, see *Laws of Vermont*, 1832 (Act No. 64, Miscellaneous), 118. For similar references to “adopted son and adopted daughter” in later acts, see *ibid.*, 1860, 178; 1861, 173; 1862, 149.

¹⁶ For this case, *Town of Tunbridge v. Town of Eden*, see *Reports of Cases Argued and Determined*

in the *Supreme Court of the State Vermont: March Term 1866*, vol. 39, n.s., 17–24. The first quotation is found on p. 20 and the other two on p. 21. The court gave no explanation for its assertion on the one hand that the father had legal control over the child and its assumption on the other that the parents were to execute the child's transfer in case of adoption. Reference to this case is in D'Agostino, *The History of Public Welfare in Vermont*, 168. I have searched in vain under *adoption* in both the *Vermont Key Number Digest*, vol. 1 (1968), and *Corpus Juris Secundum*, vol. 2 (1972), which prevailed before 1863. The absence of references to the case may well be because that procedure has historical rather than practical relevance to present law.

¹⁷ See *Manuscript Vermont State Papers*, vol. 62, 31.

¹⁸ For specific instances of these several situations, see petitions in *Manuscript Vermont State Papers*, vol. 45, 77; vol. 55, 118, 184; vol. 56, 272.

¹⁹ For a specific case, see *Manuscript Vermont State Papers*, vol. 59, 32, and for a probable one see *ibid.*, vol. 55, 175. When the petitions are silent on the origins of the child, it seems likely, in view of specific mention of such origins in most of these documents, that illegitimacy was involved in at least some of those instances.

The phrases “as if . . . the legitimate child of” or “as if born in lawful wedlock” employed in some of the petitions and private acts concerned with granting change of name and inheritance rights must not be taken to imply that the child was illegitimate. They are to be understood in this context as only descriptive of the total rights sought or granted. Indeed, the first phrase is employed in the provisions of the general adoption laws of both 1853 and 1863 and clearly and only indicates the total nature of the rights and obligations of the adopted child. These acts applied, of course, to all adopted children and not merely to illegitimate ones.

²⁰ *Laws of Vermont*, 1817, chap. 108.

²¹ *Ibid.*, 1822, chap. 9.

²² *Ibid.*, 1841, no. 86.

²³ See *ibid.*, 1842–1862, *passim*.

²⁴ For a single instance of an adoptee's being required to record her consent to a special act, see *Laws of Vermont*, 1849, no. 99. It seems likely, however, that she was an adult at the time of the completion of her adoption.

²⁵ See *Records of the Governor and Council*, vol. 7, 342. For a manuscript record of the same, see *Manuscript Vermont State Papers*, vol. 75, 26 (30 October 1828).

²⁶ See *Senate Journal*, 1841, 51, 57.

²⁷ *Laws of Vermont*, 1853, no. 50, 42–44. The law was entitled “An act to provide for the adoption of persons and changes of name.”

²⁸ For specific mention of this in two petitions, see *Manuscript Vermont State Papers*, vol. 48, 37; vol. 56, 272.

²⁹ For three instances of adoption by women alone, see *Laws of Vermont*, 1843, no. 67; 1850, no. 141; 1860, no. 146 (sec. 1, subpar. 5). It may be noted here that although more boys were adopted than girls in 1804–1863, the difference in numbers grew smaller during the period and in the last decade became insignificant.

³⁰ *Laws of Vermont*, 1822, no. 9.

³¹ *Ibid.*, 1853, no. 50, 43.

³² I have found no record of any refusal of a petition for change of name and/or inheritance rights. However, I have not searched the journals of the legislative bodies page by page, and such search alone would allow a conclusive statement. In any case, the lack of any refusal would not mean that the possibility did not act as a deterrent.

³³ For an instance of an adoption prior to 1804 that was not later completed, see Randolph Probate District Records (Windsor County), vol. 1: Will of Ezra Egerton, Randolph, 1793, 320. This information was kindly supplied by Betty Bandel, professor emeritus, University of Vermont. There is no ground to doubt that there were others prior to 1804.

³⁴ For examples of delays of sixteen and seventeen years, respectively, between adoption and petition for change of name and inheritance rights for the child, see *Manuscript Vermont State Papers*, vol. 45, 77; vol. 57, 177. Several other petitions suggest by their language, though they do not specifically so state, that there was a delay. Still others, in contrast, by stating the age of the child or by other signs, indicate comparative promptness.

³⁵ From 1828 to 1841 the legislature refused to pass any act “making one individual heir at law to another” (see *Manuscript Vermont State Papers*, vol. 75, 26). Thus for these years the acts for completing adoption were confined only to change of name and cannot be distinguished from those for a change of name unrelated to adoption. From 1828 through 1835, however, the original petitions survive, and their texts allow a determination of the act pertaining to adoption. But thereafter these documents are lacking. In consequence, it can only be surmised that for the next five years the number of acts completing adoption, insofar as it could be completed during this period, probably ran

between five and ten. This estimate is based on the number passed immediately before and after this half decade.

³⁶ See *Laws of Vermont, 1804–1835*, passim. See also card index to *Manuscript Vermont State Papers*, compiled by Mary G. Nye. Search must be made in this invaluable scholarly aid by name as supplied in the laws, as Nye did not index under adoption, change of name, or inheritance rights.

³⁷ For substantiation, see *Laws of Vermont, 1841–1862*. In the first period twenty-five and during the second sixteen of the adoptions completed granted only inheritance rights and no change of name. These are included in the figures given above, even though some of them probably concerned adults. That the general law of 1863 (see *Laws of Vermont, 1863, 416–417*) allowed the adoption of both children and adults without change of name argues for their inclusion.

³⁸ See *Laws of Vermont, 1853*, Public Act No. 50, 42–44.

³⁹ For these returns, see *ibid.*, 1855, 222; 1859, 181.

⁴⁰ The records of the Secretary of State's Office on adoption, including those for 1853–1863, were originally located in its state papers division and later in its vital records division. Robert L. Hagerman, assistant editor of the *State Papers of Vermont*, compiled from these records and from the laws of Vermont 1801–1870 a card file of changes of name, including those involved in adoptions. The original set of cards is in the State Archives, Secretary of State's Office. These cards also, of course, show only two adoptions under the law of 1853.

⁴¹ For substantiation of these figures, see *Laws of Vermont, 1841–1862*. For previous mention of these and other figures on the number of adoptions, see n. 36 above.

⁴² For the text of this statutory provision, see *General Statutes of the State of Vermont (1863)*, 415–417.

⁴³ That some foster parents—and possibly some adopted children as well—desired to leave the child's name unchanged is at least suggested by the fact that about thirty of the 150 or so special acts passed in the previous decade and concerned with adoption did not include change of name but only inheritance rights.

⁴⁴ The Vermont Supreme Court in a decision in 1866, which has already been discussed here as concerned with a case of adoption in about 1848, clearly implied that the courts might question whether a particular foster parent was a "suitable person" to undertake an adoption. As there were no provisions in either the common law or statute law to sanction such intervention by the courts in matters of adoption, the Supreme Court must have found authority for it in the general principles of the law. See *Reports of Cases Argued and Determined in the Supreme Court of the State of Vermont: March Term, 1866*, vol. 39, n.s. 21 (*Town of Tunbridge v. Town of Eden*). The Supreme Court also took the occasion to give high praise to the social advantages of adoption. See *ibid.*, 23.

⁴⁵ For the provision with respect to the change of name, see *General Statutes of the State of Vermont (1863)*, 416–417.

⁴⁶ For this provision, see *Laws of Vermont, 1853*, no. 50, 43, and *General Statutes of the State of Vermont*, chap. 56, 416.

⁴⁷ See *Corpus Juris Secundum*, vol. 2, p. 420.