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Genetic Stigma in Law and Literature Orphanhood, Adoption, and the Right to Reunion

Alice Diver



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To Baby Scarlett, Gerry, Ellen, John, Celie, and Eva (plus Sami, Eden, Tommy, and David, who somehow put up with us all) and to the Martins, Gallaghers, Divers, Quigleys, Raimondos, Di Napolis, and McCarthys, for their welcomes over the years.

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1

Introduction

‘...foundlings really lived in the margins of justice. There was no law regulating their position. Whenever there was a problem concerning a foundling, their interests had to be weighed against the interests of other people.’¹

—Olga Tellegen-Couperus, ‘Father and Foundling in Classical Roman Law’
Journal of Legal History (2013) 34 (2), pp. 129–138, p. 138

The concept of genetic stigma, in the sense of being othered on the basis of one’s birth status or ancestry, is seen frequently in various works of literature—and in the mechanisms of law or custom—across a wide range of eras. This book looks to differing genres (folklore, faery tales, classic novels, children’s literature, science fiction) where orphans, foundlings, and adoptees have been othered, discriminated against, or somehow disenfranchised.² The chief protagonists within these narratives tend to be searching for information, or truths, possibly seeking some form of contact or reunion with their estranged kinfolk. Most have been deprived of origin and family life, via

¹ Tellegen-Couperus, Olga ‘Father and Foundling in Classical Roman Law’ *Journal of Legal History* (2013) 34 (2), pp. 129–138, p. 138.

² Rather than conflate the definitions of orphan and foundling, the terms are used here separately to differentiate between children who have had one or both parents die (‘orphans’) and those who have become parentless due to abandonment or relinquishment (‘foundlings’). Orphanisation will denote situations where law or custom have deliberately intervened to sever the child from their original familial ties (usually to enable adoption or fosterage). On the various distinctions, see further Allen, Rebecca Jane and Nakonechnyi, Alex, ‘Orphans, Displaced, and Institutionalized Children’ in Baikady, R et al. (eds.) *The Palgrave Handbook of Global Social Problems* (2023) Palgrave Macmillan: London. See also Kaneko-Iwase (2021) on how international law has added to the uncertainty surrounding

orphanhood or ‘orphanisation,’ which can occur where they might have one or two living parents, but lack some form of ‘legitimacy,’ legal or societal, essentially rendering them kinless. In other words, having been abandoned, relinquished, or rejected by their original family, they are more likely to be dehumanised or treated as ‘less than’ their fellow citizens, in terms of being unable to enjoy certain rights (such as home and family life, child welfare paramountcy, equality of treatment, dignity) or not being permitted the same degree of access to the resources needed to survive the human condition (adequate food and shelter, health, kinship, ancestry, a sense of identity). The losses associated with orphanhood and orphanisation have tended to be enabled—and then justified—by law or custom, often to aid the achievement of some apparent greater good: to deter ‘bastardy’ or overpopulation, protect long-standing social institutions (such as marriage or the norms of property inheritance), preserve scarce resources, prevent social unrest, or stave off a return to war or armed conflict. These are common themes across the narratives chosen for inclusion here.³

After Chapter 2’s analysis of folklore and fairy tales, the book looks mainly to works of English literature—and the sociolegal frameworks mentioned within them. It sometimes refers to other relevant jurisdictions (Ireland, Canada, and Korea, for example) where adoption processes have tended to require orphanisation or where formal Investigations into historic abuses have been carried out or are ongoing. Much has been written already about the systemic failings and rights violations associated with adoption throughout its long and convoluted history, within several jurisdictions.⁴ Sadly, fresh controversies and human rights violations involving adoption, displacement,

the definition(s) of the term foundling, by frequently ‘confusing or combining the condition of nationality grant with the definition of a foundling.’ Kaneko-Iwase, M., ‘*Nationality of Foundlings: Avoiding Statelessness Among Children of Unknown Parents Under International Nationality Law*’ (2021) Springer, London, p. 78.

³ Many more works and genres might have been included, had there been room: the tropes of heroic orphan and devious foundling are also widespread across, for example, indigenous folklore and trickster tales, works of Renaissance drama, graphic novels and comics, and popular culture in film and television. See further Gymnich et al., ‘*The Orphan in Fiction and Comics since the 19th Century*’ (2018) Cambridge University Press: Cambridge; Morris, Robert B., ‘American Cultural Myth and the Orphan Archetype’ *European Journal of American Culture* (2016) 35 (2), pp. 127–145; Simpson, Eileen, ‘*Orphans Real and Imaginary*’ (1987) Weidenfeld & Nicolson: New York; Curtis, James Michael, ‘In Absentia Parentis: The Orphan Figure in Latter Twentieth Century Anglo-American Children’s Fantasy’ *Dissertations* (2016) 322; Kimball, Melanie A., ‘From Folktales to Fiction: Orphan Characters in Children’s Literature’ *Library Trends* (1999) 47 (3), pp. 558–578.

⁴ Keating, Jenny ‘*A Child for Keeps: The History of Adoption in England, 1918–45*’ (2009) Palgrave: London; Davey, Samantha, ‘*A Failure of Proportion: Non-Consensual Adoption in England and Wales*’ (2020) Hart: Oxford; Carp, E Wayne, ‘*Family Matters: Secrecy and Disclosure in the History of Adoption*’ (2000) Harvard University Press: Boston.

and trafficking across national borders continue to occur.⁵ The dangers of having only vague legal definitions—of orphans, foundlings, family life, and non-consensual relinquishment—are also becoming increasingly apparent, in both domestic and international case law. Certain works of literary fiction convey this urgency, capturing the ‘testimonies’ of those who were affected by orphanisation, irreversibly othered and/or denied the choice or chance of reunion or repatriation with origin. The book will therefore hopefully be of interest to readers from a variety of disciplines: literature, history, law, critical adoption studies, and sociology. Adoptees might also find the book’s observations relevant. For those who search for original truths, some of the oldest stories involving long-held secrets can offer the most useful insights. As Hindle (2020) argues,

Fairy tales can be read in different ways – from an historical perspective, in the realm of unconscious phantasies and the internal world, and in terms of the real lives of children and parents.⁶

Often the ‘message’ of the narrative concerns illicit revelations, made in defiance of some voiced or unvoiced wisdom—or law, or custom—that counsel against admitting identity truths to a suspect other in case this leads to trouble. Likewise, reunions between estranged kinfolk—though sometimes heart-warming—can also be quite fraught, in life as in works of fiction. We are shown, for example, what can happen in changeling lore where a stolen-away human child somehow manages to return to their original family—where the faery folk tired of them as they grew up or—even worse apparently—began to resemble their human ancestors too closely. These unlikely reunions seldom go well. This may be down to the ‘hybrid’ nature of the displaced child’s identity, which condemns them to a sort of half-life of belonging nowhere. Such folkloric warnings—against a too-sudden reunion, or an obvious lack of gratitude on the part of the orphan or foundling—highlight the indelible nature of otherness and its stigmas, regardless of era. Such warnings are unlikely to be lost on adoptees who might have searched to no avail or experienced familial rejection or failed reunion. As law and much literary fiction tends to reiterate, there are certain ‘sacred’ boundaries surrounding home, family, and privacy that are perhaps not meant to be too easily crossed, unless you are prepared to risk paying a heavy price.

⁵ Office of the High Commissioner for Human Rights (OHCHR, UN), ‘*Report on the Human Rights Situation in Ukraine 1 August 2022–31 January 2023*’ (2023). <https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2023/23-03-24-Ukraine-35th-periodic-report-ENG.pdf>.

⁶ Hindle, Debbie, ‘*Hansel and Gretel: A Complex Tale of Parent–Child Interactions*’ *Infant Observation* (2020), pp 1–15, p. 1.

The book's structure is as follows: Chapter 2 offers definitions and brief discussion of the key concepts—with outlines of the main theoretical frameworks—that are relevant to the arguments and analyses of later chapters: illegitimacy, orphanhood, foundlings, changelings, and infanticidal exposure (i.e. abandonment) of the 'surplus' child. It looks then to early works of literary fiction, such as folklore and fairy tales, highlighting how their enduring orality often gave voice to those who lacked literacy or any form of social capital.⁷ In the absence of codified laws and clear customary norms, the various 'rules' within such folkloric narratives (including superstitious beliefs) served to guide behaviours, communal and individual, often by offering dire warnings on the taking in—or leaving out—of strangers or unexpected kinfolk. The sanctity of hearth and home were paramount and had to be defended against anything or everything that might threaten them in some way. Exposure which served to orphanise was a significant device in the enablement of de facto adoptions or fosterage, but was also useful in terms of permitting infanticide, masking illegitimacy, stigmatising the vulnerable, and controlling the behaviour of women. Infertility—and methods for addressing it—also appears as a key trope within some of the darker fairy tales (*Hansel and Gretel*, *Little Snow White*, *The Juniper Tree*) alongside an array of witches, evil stepmothers, and substitute homes. Reunions may occur, but there is no guarantee that they will go well: often they simply confirm that certain *others*—related or otherwise—should remain outside of the familial.

Chapter 3 examines how some of the superstitions and fears of earlier eras survived or evolved within some of the classic works of Romantic and Victorian fiction, giving rise to a variety of well-known waifs, monsters, 'witches,' heroes, and villains. Legislation and case law on adoption was still scarce (and generally the preserve of the wealthy, who were preoccupied with property transmission). The notion of child rights was yet to emerge. As ever, child abuse and neglect were much in evidence: the mistreatment, othering, and social exclusion of *Wuthering Heights*' young Heathcliff and *Frankenstein's* creature are analysed here, on the basis that their respective abandonment and orphanisation sparked their vengeful natures and led to their eventual demise. *Jane Eyre* features too, as the archetypal, well-behaved worthy heir, and by virtue of her genuine orphanhood. As Nixon (2011) has observed, often,

⁷ See further Sale Roger 'Fairy Tales' *The Hudson Review* (1977) 30 (3), pp. 372–394 on how 'the stories we know are derived from a relatively late period just before they began to be written down and collected but are descendants of versions that go back into the mists of time, through centuries we somewhat plumpily sum up with the term "oral tradition"' (p. 372).

...law and literature work together not only to develop the “estate, blood, and body” conceptual framework of the orphan, but to develop the storytelling structures that enact that definition.⁸

Jane’s story is one of hard-won reunion with long-lost family and restoration to her rightful position in society as a wealthy, respectably married mother, though she only achieves this with the help of supernatural intervention. Some orphans in this era do seem to be able to tap into preternatural abilities. As Vanderbeke (2018) noted however, ‘...as supernatural interference and godly impregnation have gone out of fashion...orphanhood ... partly replaced the story of the divine but absent parent.’⁹ The Dickensian orphans and foundlings—there are many—tended to lack otherworldly giftedness, but still often found wealthy benefactors and relatively happy endings almost as if by some magical interventions (*Great Expectations*, *Oliver Twist*, *David Copperfield*). This era is notable also for lacking the sort of laws and customs that might have been very helpful to orphans and foundlings (equitable trusts and succession laws aside), but its works of fiction do at least highlight the horrors and societal injustice of workhouses and orphanages. Reunions may be impossible, given how many of the orphans are genuinely kinless, but often a kindly relative or benefactor will appear to take the place of the original parent or family. For certain others, more monstrous than heroic, familial reunions might result in highly traumatic, horrific episodes that reinforce folkloric warnings on the potentially malevolent nature of the abandoned or exiled descendant.

Chapter 4 looks to a selection of works that were gaining a widespread popularity just as some of the early legislative frameworks on orphans and foundlings were being crafted. Lawmakers were mainly concerned with outlining the terms under which the employment of such children might be made legal (rather than safer or fairer). The archaic systems that were meant to oversee and achieve child welfare—workhouses, orphanages, foundling hospitals, maternity institutions—enabled a long ‘golden age’ of adoption, aided and abetted by heart-warming female orphan rescue narratives that have proved enduringly popular. Reflecting real-life practices of the time, foundlings, orphans, and adoptees are ‘transplanted’ across familial, societal, or national borders (*Anne of Green Gables*; *A Little Princess*; *The*

⁸ Nixon Cheryl, ‘*The Orphan in Eighteenth Century Law and Literature: Estate, Blood, and Body*’ (2011) Routledge: London, p. 262.

⁹ Vanderbeke, Dirk ‘The Orphan in Comics and Graphic Novels’ in Gymnich, Marion et al. (eds.) ‘*The Orphan in Fiction and Comics Since the 19th Century*’ (2018) Cambridge University Press: Cambridge, p. 242.

Secret Garden). They tend to be incredibly stoic, enduring many trials—involving poverty, homelessness, and stigmatisation—before being rescued and welcomed into the fold of a substitute or de facto family. Their capacity for gratitude was often a key characteristic, alongside their ability to entertain and storytell. Neglectful parenting also featured however, tying in with a brief appearance by the character of Peter Pan (*The Little White Bird*), who was, at that point in his unending childhood journey, still resident amongst the Kensington Garden fairies following his rejection-led exile from family life, and conspiring with them to intervene in the fate of exposed or forgotten-about babies. Gardens are significant, with one mid-century children's novel in particular—*An Episode of Sparrows*—meriting a close reading, as it sets out very clearly the difficulties of creating a child protective system that will neither orphanise nor incarcerate. As Godden herself noted, 'all of my novels are stories but underlying each is a deeper theme, never said, but there.'¹⁰ Reunions here, as ever, tend to be heart-breaking or terribly flawed in some way if they occur at all. Benefactors however generally appear to be kindly and/or wealthy, despite their shared propensity for turning up at the very last minute, after considerable suffering has been endured by the abandoned or orphaned child. Arguably, human rights law has often had a not dissimilar, overly relaxed approach to certain aspects of child welfare and family life rights, not least towards the protection of identity rights and truth recovery, and the adoptee's frequent need for accurate information and genetic kinships. The issue of lost or removed identity remains a relevant issue, however.¹¹ A brief look at human rights provisions and relevant case law is included here, with a view to conceptualising how a meaningful, justiciable right to reunion or origins might perhaps be teased out of them.

Chapter 5 brings the book to a close, offering thematic analysis of several works of dystopian fiction. Within these, significant aspects of family life and kinship have been altered or expunged against a backdrop of simmering conflict, extreme austerity, or a scorched earth landscape. There are few places of safety and little evidence of happy home lives or nurturing environments. Generally, laws are highly punitive and very sparse: there are numerous rights violations, including torture, slavery, and state-sanctioned murder or infanticide (*The Handmaid's Tale*, *Logan's Run*). Childhood and parenthood, in particular, motherhood, are deformed or redundant, while systems for

¹⁰ Godden, R., *Introduction, an Episode of Sparrows* (1955) xv (Kindle ed.).

¹¹ See further Baglietto, C., Bordier, L., Dambach, M., and Jeannin, C., 'Preserving "Family Relations": An Essential Feature of the Child's Right to Identity' (2022) Geneva, Switzerland: Child Identity Protection (CHiP); Browne, Kevin et al., '*Child Abandonment and Its Prevention in Europe*' (2012) University of Nottingham (available at [Child Abandonment and Its Prevention in Europe.pdf](https://www.bettercarenetwork.org) ([bettercarenetwork.org](https://www.bettercarenetwork.org) accessed 20 May 2023)).

substitutive care hark back to the ideologies and high-walled institutions of Victorian and Edwardian eras (*The Giver*, *Never Let Me Go*). Where laws are equivocal or inadequate, folkloric wisdoms reappear to fill the gaps, sometimes as rumours, but more often as near-sacred traditions that must not be ignored. Literacy matters and cannot be taken for granted.¹² Lack of access to the written word—as a means of suppressing resistance—reinforces the importance of being able to record one’s testimony accurately and to have it carefully preserved and listened to. Reference is made also to recent Inquiries into human rights abuses (Ireland, the UK) given that they contain written and verbal accounts of those who survived—or inherited—the harms of the often-dystopian brutalities of twentieth-century forced adoption processes. The issue of redress is also discussed here.¹³ Within the fictional narratives, a few happy reunions do occur, albeit very briefly and only in two sequels (*The Testaments*, *Son*). They largely adhere to the sometimes-glib conventions of the Disney-esque fairy tale—rather than following a darker pathway towards the more usefully disturbing, justice-heavy endings chronicled by the Brothers Grimm—by bringing the narratives to an abrupt, *all-is-well* close. Many more sequels would perhaps be needed to explore more fully the vagaries and challenges of familial reunions in these contexts.

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¹² Klarer, Mario, ‘Orality and Literacy as Gender-Supporting Structures in Margaret Atwood’s “*The Handmaid’s Tale*”’ *Mosaic: An Interdisciplinary Critical Journal* (December 1995) 28 (4), pp. 129–142.

¹³ For an excellent summary of the UK Government’s ongoing refusal to offer an apology for historic violations of family life (via forced adoptions) in England, see Noble, Arwen, ‘Secrets and Lies: Why a Full Government Apology Is Needed for the Victims of Forced UK Adoptions’ Perspective (2023). <https://perspectivemag.co.uk/secrets-and-lies/>.

¹⁴ On *The Grinch*’s founding status, which will be included in the next book.

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2

Customs and ‘Laws’ of Orphanisation: Bastards and Foundlings in Folklore and Fairy Tale

2.1 Introduction

...potent cocktails of beauty, horror, marvels, violence, and magic, drawing in audiences of all generations over the course of centuries.

—Tatar, M. ‘*Why Fairy Tales Matter: The Performative and the Transformative*’
Western Folklore (2010) 69 (1), pp. 55–64, p. 55

Absence of natal origin has long been framed as a worrying sign of otherness: often steeped in stigma, it can both spark and signify unfairness, inequality, and societal injustice. This chapter offers analysis of the sociolegal and cultural significances that seem to underpin the need for knowable and authentic ancestral identity. It includes early works of literature,¹ such as certain folkloric and fairy tales which have their origins in oral traditions. It aims to gauge the extent to which genetic kinlessness can lead to peculiar stigmas, losses, and harms, not least deprivation of origin. Many archaic legends and myths share common themes of abandonment, orphanisation,

¹ As Gibson (2022) outlines, the period between 1660 and 1834 represents an intersection of ‘two distinct phases in the policing of illegitimacy’ within English law. Prior to the English civil war, unwed parents could face prosecution; after 1660, such prosecutions were much less common. The Old Poor Law dealt with illegitimacy by compelling mothers to identify who had fathered their child so that they might seek maintenance. The New Poor Law (1834) changed this making mothers carry the burden, alone. (See further, Gibson, Kate ‘*Illegitimacy, Family and Stigma in England, 1660–1834*’ (2022) <https://notchesblog.com/2022/09/22/illegitimacy-family-and-stigma-in-england-1660-1834/>. Blog. Web (accessed 01 May 23).

and illegitimacy, any of which might resonate with adoptees seeking information on—or contact with—estranged genetic relatives. The practice of exposure (Shaw 2001)² is discussed, given its use (especially in folk and fairy tales) as a means of infanticide or orphanisation, the latter of which is framed here as a key sociolegal device in the enablement of adoption or fosterage. Infanticide appears again in Chapter 5, disguised as euthanasia for any children deemed to be surplus or imperfect (for example, the deemed ‘inadequate’ infants of Lowry’s *The Giver* (1993) or Atwood’s *The Handmaid’s Tale* (1985)). Parental abandonment is relevant also, as are the darker aspects and tropes of many adoptee search and reunion narratives: poverty, fear, shame, stigma, and unwed motherhood.

As the first section of this chapter sets out, quite often in life and literary fiction, ‘the image of the bastard as outsider is typical.’³ Tied to this is a variety of discomfiting, complex motifs and imageries which point to the sort of otherness that can arise from deliberate orphanisation—and, perhaps, subsequent rejection—by one’s kinfolk. I argue that lasting layers of shame (sometimes tinged with an added element of superstitious belief) can easily attach to the loss of origin via familial abandonment. Likewise, many things can deter or prevent the orphanised from searching out natal origins, not least the fear of rejection. This can be compounded by the worrying trope of the aggrieved or disowned descendant returning to demand redress, reunion, or access to long-hidden truths. The notion of illegitimacy traditionally had links and overlaps with other vulnerabilities: poverty, social exclusion, and inequality of treatment. Although ‘the bastard, the foundling, and the orphan’ did to some extent eventually ‘merge into one fuzzy category,’⁴ differing customs and rituals could still frequently attach to their births, deaths, burials, and banishments. In addition to ‘bastardy,’ the often-ambiguous concept of the foundling merits analysis here, given its continuing political and legal relevance. It is still seen, for example, in discourses on international human rights

² Shaw, Brent D., ‘Raising and Killing Children: Two Roman Myths’ *Mnemosyne* (Feb 2001), Fourth Series (54) 1, pp. 31–77 which offers an interesting analysis of the legends surrounding rejection, exposure, and acceptance of paternity in Roman law. See further Radin, Max ‘The Exposure of Infants in Roman Law and Practice’ *The Classical Journal* (March 1925) 20 (6), pp. 337–343, and Patterson, Cynthia, “‘Not Worth the Rearing’: The Causes of Infant Exposure in Ancient Greece’ *Transactions of the American Philological Association* (1974–2014) (1985) 115, pp. 103–123.

³ Findlay, Alison, ‘Illegitimate Power: Bastards in Renaissance Drama’ Manchester University Press (1994) p. 1. See also Schmidgen, Wolfram ‘Illegitimacy and Social Observation: The Bastard in the Eighteenth-century Novel’ *ELH*, (2002) 69 (1), pp. 133–166, on how ‘over ninety percent of the bastards in the drama of this period [were] male’ (p. 133), a factor discussed in the following chapter in the comparison of Heathcliff’s fate (*Wuthering Heights*, 1847) with that of the titular character in *Jane Eyre*, 1847).

⁴ Zunshine, Lisa, ‘Bastard Daughters and Foundling Heroines: Rewriting Illegitimacy for the Eighteenth-Century Stage’ *Modern Philology* (May 2005) 102 (4), pp. 501–533, p. 505.

law, not least those that seek to analyse the fluid definitions of statelessness, or the nature of the war crime that is forced adoption.⁵

As Goldberg (1986) argued, when otherwise 'sensible people tell modern legends, disbelieving but also believing the incredible and almost incredible,' it may well be because they are 'wrestling with the problems inherent in the fairness of their world.'⁶ Some of the faery mythologies surrounding the 'changeling' child are quite telling, as are those seen in certain dark tales involving child abandonment, 'evil' stepparenting, or convoluted reunion quests. Tied to these are some of the most distressing adoptee narrative tropes: imposter children substituted for those of a bona fide blood relative, and harsh rejections aimed at ensuring protection of the safe, legitimated spaces of the familial. The timeless difficulties of achieving or maintaining reunion with one's estranged kinfolk are also depicted within such stories. Though codified laws may be largely absent within them, such voids are generally filled by a wide range of customary norms, superstitions, and religious or spiritual beliefs. Oral traditions on such things clearly matter and they have persisted for a wide variety of reasons. Certain archaic tales are included here on the basis that 'knowledge of folklore motifs can help literary scholars and folklorists alike to understand and interpret' (Davidson 1975)⁷ key concepts and behavioural norms. Where, for example, widespread adherence to rules and customs is grounded in a desire to avoid punishment or public opprobrium, it makes sense to explore the more frightening stories, myths, 'rituals and traditional practices which comprise a culture' (Perrie 1989)⁸ and encourage conformity. This is especially so where traditional folk tales reveal something about the extent to which archaic stigmas and prejudices might yet still appear in works of literary fiction and subtly influence the beliefs and workings of any given society and its legal systems. Bascom (1954) has similarly argued that folklore can play a key role 'in validating culture, in justifying its rituals and institutions to those who perform and

⁵ The notion of statelessness has been used to attempt justification of the forced adoptions—and trafficking—of orphanised children in Russia-occupied Ukraine. See further <https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2023/23-03-24-Ukraine-35th-periodic-report-ENG.pdf>.

⁶ Goldberg, Christine, 'The Construction of Folktales' *Journal of Folklore Research* (1986) 23 (2/3) Special Double Issue: The Comparative Method in Folklore pp. 163–176, p. 164.

⁷ Davidson, HR Ellis, 'Folklore and Literature' *Folklore* (Summer, 1975) 86 (2), pp. 73–93, p. 74.

⁸ Perrie, Maureen 'Folklore as Evidence of Peasant Mentalite: Social Attitudes and Values in Russian Popular Culture' *The Russian Review* (April 1989) 48 (2), pp. 119–143, p. 122 arguing also that 'many folklore themes are international in character, but it is not clear whether this reflects a common origin, migration, or the spontaneous generation of similar mental structures in similar environments.'

observe them.⁹ Although stories grounded in orality seldom provide us with terribly detailed or complex.

information about speeches, laws, wars, or coal production, they do serve particularly well for insight into common opinions and attitudes, everyday life in the streets, in houses, apartments, and hovels. (Pasco 2004)¹⁰

That so many archaic tales have survived to the present day also demonstrates the importance of preserving those verbal testimonies which can give voice to those who lack literacy or meaningful opportunities to be heard. In sum, oral storytelling traditions can capture the perennial concerns and fears of an often-overlooked, voiceless ‘peasant society.’¹¹ There is a timelessness—and a timeliness—to all of this: orphanisation and othering via law or custom still yet occur, as do familial reunions and rejections. Otherness remains a relevant notion in both law and popular works of fiction. Stigma still attaches to kinlessness, limiting access to justice, and making the right to origin almost completely fictive (as later chapters argue).

2.2 Illegitimacy: *Terra Filius* and ‘Witnesses of Wickedness’

...illegitimates were treated as aliens in every way, deprived not only of inheritance from their parents, but also barred from exercising any public privileges.

—Curran, J ‘The Illegitimate Child: From Filius Nullius to Equal Protection’
Journal of Public Health (1968) 58 (2), pp. 213–214, p. 213

Prior to the heroic and monstrous orphan tropes of much Victorian fiction (which are discussed in Chapter 3), the illegitimate other tended to be portrayed as a suspicion-arousing, unwelcome interloper. Often, they were depicted as being set on some form of revenge against those who had abandoned, excluded, or denied them space at the ‘sacred’ familial hearth space.

⁹ Bascom, William R ‘Four Functions of Folklore’ *The Journal of American Folklore* (1954) 67, No. 266, pp. 333–349, p. 344.

¹⁰ Pasco, Allan H. “Literature as Historical Archive.” *New Literary History*, (2004) 35 (3), pp. 373–94, p. 373.

¹¹ Perrie, *op. cit.*, adding that ‘in conventional historical sources, the attitudes and values of the predominantly illiterate rural population are usually mediated through the consciousness and prejudices of the educated elite. Folklore evidence, by contrast, promises to give us more immediate access to the essentially oral culture of the common people’ (p. 120).

They at times called to mind the otherworldly, usurping 'changeling'¹² or shared key characteristics with some of the outcasts featured in the many folkloric 'anecdotes of lost and found children' (Lester 2007). Such tales have long served to influence and inform sociocultural definitions of foundling, orphan, and bastard. This section examines the legal notion of illegitimacy as it appears in early works of literature, arguing that its shameful presence can easily trigger an indelible form of lasting otherness, grounded in fear and superstition (if not also the vagaries of property and succession law). The origins—and derogatory nature—of the term 'bastard' also bear noting at this point. As Teichman (1982) outlined, it was believed to have arisen from the.

... Old French word *ba(s)t* meaning 'baggage', this being also the origin of the word 'batman', which once meant 'baggage-man' or 'baggage-servant'. 'Bastard' is formed from 'ba(s)t' and 'ard', a suffix normally used to form derogatory nouns such as 'sluggard', 'drunkard', etc.¹³

Where the bastard seemed to mysteriously lack *any* sort of origin, this could apparently be seen as an indicator of malign intent or innate evil, especially if they had appeared out of nowhere. The law might conveniently view them as being.

...nothing but *Terra filius*, rising out of the ground like the Wind, or as if he were begotten of the Wind, (which we know not from what part of the Earth it comes) without the help of a Father. (Brydall, 2018)¹⁴

Gender mattered, however, then as now: the male bastard might more visibly and directly 'threaten the patrilineal transmission of status, wealth, and power' (Schmidgen 2002).¹⁵ His acceptance into the protective folds of genetic or familial kinship could prove difficult. His very existence might be perceived as a visible challenge to those complex, carefully crafted legal and equitable systems that determine social and cultural inclusion and endorse

¹² See further McGrath, Thomas 'Fairy Faith and Changelings: The Burning of Bridget Cleary in 1895' *An Irish Quarterly Review* (Summer, 1982) 71 282, pp. 178–184, p. 178. See also Briggs Katherine 'The Vanishing People: Fairy Lore and Legends' (1978) Pantheon Books, New York (Chapter 7) pp. 93–103; Briggs Katherine 'The Fairies in Tradition and Literature' (1967) Routledge; London.

¹³ Teichman, Jenny 'Illegitimacy: An Examination of Bastardy' (1982) Cornell University Press, New York, p. 1.

¹⁴ Brydall, John, 'Lex Spuriorum: Or, the law Relating to Bastardy: Collected From the Common, Civil and Ecclesiastical Laws. Anon.' (2018) Galle Echo, Print.

¹⁵ Schmidgen, Wolfram, "Illegitimacy and Social Observation: The Bastard in the Eighteenth-Century Novel." *ELH*, (2002) 69 (1), pp. 133–66, p. 133.

the normative, patrilinear processes of legitimate inheritance involving name, title, wealth, or property. Such frameworks have tended to bestow enhanced social status only upon ‘respectable’ descendants, permitting them to be lawful heirs and excluding all other claimants. As such, frequently, ‘the children most likely to be affected by the old, harsh labels of “bastardy” were already subject to poverty, exclusion, and disadvantage’ (Arbery 1995).¹⁶ Litigation over illegitimacy was, unsurprisingly, pretty much the preserve of the wealthy who, as property owners, wanted to keep it that way: as Helmholz (1969) stressed, ‘Whatever ideological problems bastardy litigation might ultimately raise, jurisdiction over land was always at its center.’¹⁷ Thus, if illegitimacy were to become too widespread throughout society, or perhaps too overly acceptable to the average citizen, this state of affairs could conceivably also threaten the sanctity of other ancient, society-preserving institutions, namely, marriage and the family (and the laws of inheritance that support their continuation). It could serve also to inflame any nascent ‘anxieties about changes to the structure of the family itself’ (Barker and Hinds 2002),¹⁸ which do tend to emerge from time to time, regardless of era. In many jurisdictions, property inheritance required a clear evidencing of an heir’s legitimate ancestry, via marriage or some other kinship-sealing legal device such as formal adoption or legitimation. This was reflected in various laws and social customs, to the extent that any ‘...children begotten of unlawful Beds’ could be ‘Witnesses of Wickedness against their Parents in their Trial’ (Brydall 2018).¹⁹ Strict adherences to such rules were indicative also of growing concerns over the need to keep some semblance of order within

¹⁶ Arbery, Glenn, ‘Why Bastard - Wherefore Base—Legitimacy, Nature, and the Family in Post-Renaissance Literature’ *Liberty Life & Family* (1995) 2, pp. 99–119, p. 100.

¹⁷ Helmholz, R. H. “Bastardy Litigation in Medieval England.” *The American Journal of Legal History* (1969) 13 (4), pp. 360–83, p. 361.

¹⁸ Barker Simon and Hinds Hilary ‘*The Routledge Anthology of Renaissance Drama*’ (2002) Routledge, London, p. 11, noting also that such ‘early modern’ plays are ‘compelling for modern readers and audiences’ by virtue of the ‘glimpse we get of the uncertainties of the world which the plays sought to make sense of...the plays speak to us of the generation of the conditions of our own existence’ [p. 13].

¹⁹ See further Brydall, John, ‘*Lex Spuriorum: Or, the law Relating to Bastardy: Collected From the Common, Civil and Ecclesiastical Laws. Anon.*’ (2018) Galle Echo, Print., p. 1 for an interesting description of the differing categories of illegitimacy (arising from, for example, ‘simple fornication,’ adultery, or incest) and an insight into the early workings of succession law.

an era of rapid sociocultural change (Schmidgen 2002).²⁰ The Enlightenment's 'preoccupation with bastardy'²¹ fits nicely with this theory, and also presages some of the dangerous fixations over illegitimacy of later periods. It clearly owed much to the eras that had preceded it, in terms of echoing those folkloric tales and traditions that reiterated stark warnings on the apparently untrustworthy nature of the unknown, unknowable outsider.

Fictional Renaissance characters 'afflicted' with the condition of illegitimacy seldom seemed to avoid meeting a troubling or tragic demise. This was particularly true of those who might have also displayed evil or monstrous features or had some 'inherent deformity' that clearly pointed to their hidden, malign otherness. Having survived parental or societal abandonment, they might have somehow gained the worrying, possibly diabolical ability to insert themselves 'into the patriarchal and primogenital hierarchies'²² of polite society. Knowable ancestry and identity clearly mattered, then as now, even to the extent that much 'drama of the time also parodied and damned the "otherness" of all manner of "foreign" peoples,'²³ presumably for good measure. As Neill (1993) argued, one stereotypical figure worth noting was James Wilder (from Conan Doyle's *The Adventure of the Priory School* (1904)), given that he presented with all of the most worrying characteristics of the bastard, symbolising the myriad dangers and risks associated with being seen as a 'sinister intruder from the past.'²⁴ His illicit family tree stretched far back in time, encompassing not only the long, often-overlapping eras of 'nineteenth-century melodrama and gothic fiction' but also taking in the disturbing 'bastard-figures of Jacobean tragedy.'²⁵ This made him simultaneously a 'vindictive misfit' and an aggrieved anti-hero, utterly set on usurping the privileged position of his more fortunate—and, inevitably, legitimate—half-brother. Much like the changelings of faery lore, his physical attributes

²⁰ See also Findlay *op. cit.*, (p. 3) who argues that, in Renaissance England, the bastard "was chosen for sacrifice to preserve the legitimate order." The CLRA (1959) also observed that 'It has been hypothesized that the English and Judaeo-Christian moralities, with their emphases on the sanctity of monogamous families, have perpetuated the stigma of illegitimacy in the hope of curbing illicit behavior and protecting the family.' CLRA, "Compensation for the Harmful Effects of Illegitimacy." *Columbia Law Review*, (1966) 66 (1), pp. 127–49.

²¹ Zunshine *op. cit.*, p. 505.

²² Schmidgen, *op. cit.*, p. 133. In later eras, this ability might be seen as near-magical (see Chapter 3) or as commendably resilient or heroic (see Chapter 4).

²³ Barker and Hinds 2003 *op. cit.*, p. 10.

²⁴ Neill, Michael, 'The Adventure of the Priory School' 'In Everything Illegitimate': Imagining the Bastard in Renaissance Drama *The Yearbook of English Studies* (1993) 23, pp. 270–292, p. 287.

²⁵ Ibid.

offered some clues as to his real identity and evil intent. His 'gothic credentials' included, for example, the use of a cloven hoof to leave misleading tracks.²⁶ He also typifies in many respects how, very often, this era's.

...representation of illegitimacy in both fictional and nonfictional literature locates the bastard at the centre of many subversive energies: uncontrolled speech or sexual activity, witchcraft, disobedience in the family, rebellion against Church or State. (Findlay 1994)²⁷

Worryingly—for some members of the ruling elites—the illegitimate character could also easily serve as a 'symbolic denizen of that realm of unredeemed nature'²⁸ where certain long-held laws, 'sacred' customs, and social norms might be easily discarded or vigorously broken. The monstrous, demonic bastard of many a Shakespearean drama for example tended to be depicted as a.

...creature who reveals the 'unnaturalness' of his begetting by the monstrous unkindness of his nature. An 'out of joint' member of a hybrid genus, he is defined as neither one thing nor the other.²⁹

Bastards and foundlings (by virtue of their abandonment by family, law, or society) do clearly share some common, overlapping characteristics in some early works of fiction and classic folklore. They are both frequently deemed to be other or outsider, deeply stigmatised and perhaps hailing from some unknowable place existing far beyond the normative comforts of the legitimate family, on the very outskirts of civilisation and societal acceptance. Law's role—indeed its absence—merits mention here: it is noteworthy that, in England, for example,

...abandoned children were not unusual in the eighteenth century ...Unlike mainland Europe where Catholic-run institutions had been caring for orphans and foundlings from as early as the thirteenth century, the UK relied on the Poor Law to cater for needy families at a parish level. The only charitable establishment that received foundlings as well as orphans was London's

²⁶ Ibid., p. 270.

²⁷ Findlay *op. cit.*, p. 6.

²⁸ Neill *op. cit.*, p. 270.

²⁹ Neill *ibid.*, p. 272.

Christ's Hospital founded in 1552. However, by 1676 illegitimate children were prohibited.³⁰

Even the term foundling can in itself be contentious: the Foundling Hospital's rules on admission, for example, usually required mothers to personally relinquish their child, handing them over rather than abandoning them anonymously. This rule was briefly disregarded during the 'General Reception' period (1756–1760), in favour of a basket being hung at the gates, echoing the European foundling wheel system that sought to protect mothers' anonymity. This 'calamitous change of policy' led to increased instances of child trafficking and a significant rise in mortality rates.³¹ Should a foundling also be obviously afflicted with bastardy's dark 'stain of illegitimacy,'³² they were much more likely to be viewed as morally deficient and/or profoundly deviant. Their exclusion from the legitimate family unit was easily justified, given that they could without warning 'swoop down upon the contrite patriarch and extort material recompense for his undeserved suffering—at the expense of his legitimate siblings.'³³ Orphans, foundlings, and bastards were framed as being burdensome to the wider community, but the bastard was often much more prone to having to endure a 'lifelong status of social pariah,'³⁴ especially if they were male. As potential heirs (in equity if not at common law), their presence threatened the positional security of the more 'lawful' successors in title.

The unexpected or estranged female descendant was usually given a more sympathetic treatment in the literature, with a less worrying back story, perhaps even quite merrily 'going back to the romances of antiquity.'³⁵ They were often protected—and socially acknowledged to some extent at least—by a visible, perhaps pleasant fosterage or wardship arrangement (such as the ones associated with Miss Williams in Austen's *Sense and Sensibility* (1811), or Harriet Smith in *Emma* (1815)). Later, as a key figure in many a Victorian-era work (*Jane Eyre* (1847), *Great Expectations* (1861), *Bleak House* (1853)),

³⁰ The Foundling Museum 'What is a Foundling?' <https://foundlingmuseum.org.uk/our-story/what-is-a-foundling/#:-:text='Foundling'%20is%20an%20historic%20term,and%20cared%20for%20by%20others Web> (accessed 20 June 23).

³¹ Ibid.,. For the affluent however, a 'donation' of £100 could also secure anonymity (1756 to 1801).

³² Hickey, Cormac T 'Bastardy—The Stain of Illegitimacy in Medieval Ireland' *History Ireland* (2020) 28 (1), pp. 14–16. The need for wedlock before pregnancy would soon become all encompassing, as Chapter 4 sets out.

³³ Zunshine argues further that 'the prevalent eighteenth-century cultural view of a bastard centered on his capacity to disrupt the smooth transfer of property and to poison the emotional well-being of the legal family.' p. 505.

³⁴ Ibid., p. 503.

³⁵ Ibid., p. 505.

(some of which are discussed in Chapter 3), the stoic, well-behaved female foundling, orphan or half-orphan might eventually achieve some 'magical' form of familial reunion, secure a 'good' marriage, or gain an unexpected windfall inheritance. This stands in marked contrast to her male counterpart, who was more likely to be framed as a frightening 'money and status-hungry illegitimate,'³⁶ potentially murderous and irredeemably monstrous (*Wuthering Heights*, *Frankenstein*).

As with many of the folkloric tales involving faery changelings, the usual presumption was that most imposters claiming or mimicking blood kinship will almost invariably have a malign nature and/or a dark purpose. Having descended from obviously wicked, lust-ridden parents, bastards might also be similarly inclined towards sinfulness.³⁷ This belief appears to have lingered on in some form, in certain jurisdictions (as chapter five's analysis of Ireland's recent legislative reforms, outlines).³⁸ Superstitious belief in the malevolence of these unknown, unwelcome others, fits neatly alongside the presumption that a returning foundling simply must be on a vengeful mission aimed at improving their social standing. Indeed, most cultures have a wealth of highly emotive narratives on child abandonment which warns of the dark dangers of unwanted, unexpected reunions and the likelihood of sharp retribution by disowned or exiled relatives.³⁹ Protections therefore had to be put in place to ensure the safety and sanctity of the sin-free, law-nurtured, marital

³⁶ Zunshine *ibid.*, p. 505. See further Zlotnick S, ' "The Law's a Bachelor": "Oliver Twist," Bastardy, and the New Poor Law' *Victorian Literature and Culture* (2006) 34 (1), pp. 131–146 on how the New Poor Law [1834] 'shifted the responsibility for the illegitimate child from both parents to the poor mother alone, convinced that this would reduce the number of out-of-wedlock births' (p. 131). See also Breslin, H. Paul "Liability of Possible Fathers: A Support Remedy for Illegitimate Children." *Stanford Law Review*, (1966) 18 (5), pp. 859–72, p. 860 on how The Poor Law Act 1576 was intended to 'punish and deter promiscuous conduct' by requiring parents to support their illegitimate offspring.

³⁷ Neill, Michael 'In Everything Illegitimate': Imagining the Bastard in Renaissance Drama *The Yearbook of English Studies* (1993) 23, Early Shakespeare Special Number pp. 270–292, p. 276. See also Diano, Francesca, *Introduction* in Croker, Thomas Crofton *Fairy Legends & Traditions of the South of Ireland* (1998) Collins: Cork, on how the Industrial Revolution posed a threat to traditional oral storytelling with its 'delusions of progress and better standards of living.' She adds that Croker roamed the countryside to directly collect his stories of the fae from rural dwellers, unlike the Brothers Grimm's methods which involved invitations to people to have their tales transcribed. The stories were not originally intended for children but over time became so (xiii). She argues that the Grimms offered a 'perfect product for the perfect modern society, for a perfect pedagogical aim' of moralising. In contrast to this, Croker's tales aimed to offer advice on how to avoid the wrath of 'the Good People' who seem easily provoked when it comes to matters of identity and truth-telling.

³⁸ Looking at the recent Investigations into abuses in Mother and Baby Institutions in Ireland and England, and infant burial sites and their continuing significance for adoptees and mothers in many jurisdictions.

³⁹ See Šmidchens Guntis 'Folklorism Revisited' *Journal of Folklore Research* (January–April, 1999) 36 (1), pp. 51–70, p. 64 on the difficulties of establishing fully the 'transnational connections often sought in folklore studies.'

family unit. Preservation of its sociocultural superiority also required that the 'sacred' familial spaces of hearth and home be well safeguarded against the malign influence of strange others. Much folkloric wisdom on the removal of the malevolent changeling involved, unsurprisingly, an aggressive use of blazing fireplaces, handily placed chimneys, red hot tongs, and, as ever, timely exposure to the elements. It makes sense too that the dreaded figure of the witch frequently shared or supported 'the bastard's role as the accursed surplus because, like him, she is a figure of excess,' expensive to eradicate, but apparently a bit too risky to live with.⁴⁰ The need to manage 'surplus children' appears frequently across various genres, and often in connection with debates about the need for law reform or redress. Such blatant othering of rejected, disowned relatives also benefitted the nervous patriarch or genitor in other ways: public denials of kinship could help scupper any chance of eventual reunion with the original family and reinforce the sense of shame that the illegitimate foundling might already have. This in turn could have the effect of reassuring and warning the rest of society that only legitimate families and descendants should or would continue to be seen as privileged. Any unwelcome intrusions into the sacred familial—and law-sanctioned—spaces and places, could simply not be tolerated.

Findlay (1994) takes this a step further, arguing that the 'spiritual condemnation of bastardy had important economic and social dimensions.'⁴¹ As Gowing (1997) also noted of the seventeenth century, the cost of unmarried 'pregnancy was an active problem for the household and the community, around which were built strategies of secrecy, exposure, and confrontation.'⁴² Illegitimate children were expensive in many ways, not only for their parents but also for the wider community, who would be called upon to support them if or when they were abandoned through fear, shame, or poverty. Intolerance of bastardy, though harsh, does make a sort of dark, fiscal sense. Legal and customary norms designed to discourage unwed births almost always bring adverse socioeconomic consequences: to be called 'base born' suggests an upbringing mired in 'poverty and ostracism.'⁴³ Wealthier 'sinners' were

⁴⁰ Findlay p. 50.

⁴¹ Findlay *op. cit.*, p. 46 notes that funds could be redirected and the authority of the patriarchy challenged via the freedoms associated with such 'unsanctioned female fertility.'

⁴² Gowing, Laura. "Secret Births and Infanticide in Seventeenth-Century England." *Past & Present* (1997) 156 pp. 87–115 p. 87, adding that 'popular literature, ballads, and drama furnished stories of the nurturing and killing of older children, but rarely presented the far more common neonatal murders by servants and spinsters; women must have told stories that were based instead on local tales' (89).

⁴³ Teichman, *op. cit.*, n See also Davis, Kingsley, 'Illegitimacy and the Social Structure' *Am. J. Sociology* 215 (1939) 45 who adds that 'there are two approaches to the study of illegitimacy: the social welfare approach and the sociological. The latter tries to understand the institutional norms which define

however generally equipped with sufficient means to deal with illegitimate offspring, at least financially. Clearly, some degree of 'fiscal responsibility for sexual behavior largely mitigated moral concerns'⁴⁴ and societal uneasiness over who might be expected to support the unexpected or unparented child. The impoverished unwed mother was likely to be already very vulnerable, via disadvantaged background, and at a greater risk of sexual abuse, unplanned pregnancy, and, as ever, stigma. She was thus more frequently driven to child abandonment or infanticide to avoid facing ruin. As Rentoul (1914) lamented (in support of the foundling hospital): '...the English law is in this matter gross. It curses the infant, who has had nothing whatever to do with its being so born. It also damns the mother, and often gives her the option of prostitution and social degradation.'⁴⁵ For the disowned or orphanised child who managed to survive childhood, inherited stigmas meant 'second-class citizenship was an inevitable feature of [their] illegitimacy' (Krause 1969).⁴⁶ The privileges associated with familial and social inclusion remained the preserve of those who were able to prove lawful, legitimate connection, unsullied by anything suspicious, dark-natured, or apparently 'sinful' (Teichman 1982).⁴⁷ And yet, illegitimacy still tended to occur regardless of whichever sociocultural norms, or policies held sway, and no matter how these were aimed at its prevention or 'cure' (Davis 1939, 215).⁴⁸ Law's involvement and

certain births as illegitimate and to explain, in terms of the functional and structural connections of these norms with the rest of society, why illegitimacy occurs in spite of the norms, and why the illegitimate child and its parents have an inferior social status.'

⁴⁴ Francus, Marilyn 'Virtuous Foundlings and Excessive Bastards' *The Eighteenth Century* (2008) 49 (1), pp. 87–94, p. 88 noting that 'social class was the primary discriminator here, for while the poor and the wealthy accepted illegitimacy, the middle class's identity was threatened by it. The affluent could afford to support all of their children, legitimate and illegitimate... The poor and the working classes often were not bound by legal marriages, so the illegitimacy of their children was commonplace.'

⁴⁵ Rentoul, Robert R 'Britain's Need of Foundling Hospitals' *Medico-Legal Journal* (1914) 32 (2–3) pp. 89–91. See also Sauer R., 'Infanticide and Abortion in Nineteenth-Century Britain' *Population Studies* (1978) 32 (1) pp. 81–93 on how 'the sense of shame and fear of humiliation arising from having to face illegitimacy alone was so acute...that even murder became a feasible means to avoid opprobrium.' p. 85.

⁴⁶ Krause Harry D 'Why Bastard, Wherefore Base?' *The Annals of the American Academy of Political and Social Science*, (1969) 383, pp. 58–70 p. 59, suggesting further that 'the origin of the American law of illegitimacy lies deep in England's past.' As I argue in Chapters 3 and 4, such a template was still evident during the so-called 'golden age' of (forced) adoptions that persisted throughout much of the twentieth century, in many jurisdictions, via church-led 'baby scoops' and mother and baby institutions.

⁴⁷ As Teichman (1982: 126) adds, the 'contrasts between legitimacy and bastardy mirror those of 'honour and shame...poverty and inheritance, marriage and seduction, disease and purity and so on.' The literary trope of bastardy often cuts across related themes of 'seduction, rape, deception, prostitution, illegitimacy, social isolation, crime, poverty and disease.'

⁴⁸ Davis, *op. cit.*, arguing that the abolition of the concept of illegitimacy will never occur 'so long as the reproductive institutions of society are familial in character.'

influence were quite minimal: it would be some time yet before the export of orphanised children and infants (as labourers or as a means to address infertility) would start to look like a lucrative proposition. As Lester (2007) highlighted, fresh.

...concern with foundlings and abandonment began to appear in medieval Europe in the thirteenth century. This did not involve an explicit discourse: there were no treatises on such infants, and no new laws attempted to curtail illegitimate births.⁴⁹

State intervention via laws or policies—on poverty—would not become particularly significant or impactful until the nineteenth century, even though changes to class and gender roles had become increasingly obvious prior to this, what with growing 'population pressures'⁵⁰ causing more profound levels of want and squalor. England's harsh legislative reforms of 1609—aimed at controlling illegitimate birth rates—clearly saw some unwed or adulterous mothers opting for infant abandonment or infanticide rather than risking imprisonment.⁵¹ Gibson (2022) has further argued that the period between 1660 and 1834 marked an interesting point in the 'law' (such as it was) and customs surrounding the concept of bastardy, given that there were two discrete eras either side of this point in time. Maternal shaming—and monetary concerns—were significant factors, as ever. Thus, prior to.

...the English civil war, most unmarried parents were prosecuted for sex outside marriage by the church courts, but when the courts resumed in 1660, prosecutions declined considerably. Throughout this period, illegitimacy was primarily regulated by the Old Poor Law; parish officials identified poor unmarried parents, forced mothers to name the father of their child and forced fathers to pay maintenance. All this changed under the 1834 New Poor Law, which shifted responsibility solely onto mothers and made it much more difficult to claim paternal maintenance.⁵²

⁴⁹ Lester, Anne E 'Lost but not yet Found: Medieval Foundlings and their Care in Northern France, 1200–1500' *Journal of the Western Society for French History* (2007) 35. Online.

⁵⁰ Overpopulation—and concerns over infertility—are common themes in some works of science fiction, as Chapter 5 outlines (see for example, *Logan's Run* (1967), *The Handmaid's Tale* (1985), *The Giver* (1993)).

⁵¹ King, Walter J. "Punishment for Bastardy in Early Seventeenth-Century England." *Albion: A Quarterly Journal Concerned with British Studies*, (1978) 10 (2), pp. 130–51, noting also that in 1623 another statute (21 James I, c.27) made the murder of bastards a felony punishable by death.

⁵² Gibson, Kate 'Illegitimacy, Family and Stigma in England, 1660–1834' (2022) <https://notchesblog.com/2022/09/22/illegitimacy-family-and-stigma-in-england-1660-1834/>. Blog. Web (accessed 01 May 23).

In addition to infants being abandoned for simply being born outside of wedlock, there were also those who were relinquished due to poverty: other foundlings might have shown worrying signs of difference—behavioural, physical, or mental—leaving them highly vulnerable to being rejected or neglected. As noted above, the practice of exposure was a form of infanticidal abandonment amounting to ‘in Greek terms, the...setting out of the newly born child’ to face the elements and most likely perish of neglect.⁵³ It featured in many archaic narratives, especially where characters wished to avoid the shame of raising an illegitimate child or prevent the rise of one who might grow up to overthrow the existing regime or dynasty.⁵⁴ An exposed foundling might however be ‘saved’ by the intervention of a substitute parent, religious order, or slave trader, the latter of which could profit from their ‘rescue’ of the orphanised child (Patterson 1985).⁵⁵ Arguably, this mode of orphanisation served as a blueprint for subsequent adoption laws and policies which sought—eventually—to formalise the unofficial arrangements that had long permitted ‘surplus’ children to be fostered, ‘boarded out,’ or enter indentured servitude. Exposure seems to have been quietly accepted—endorsed even—by ruling elites (particularly in times of uncertainty and societal upheaval) to preserve the existing hierarchies and protect ‘traditional’ families against unwelcome intrusions and expensive outlay (King 1978).⁵⁶ It appears in other genres also, as a means of population control, or to maintain the desired level of ‘Sameness’ within the community (*The Giver* 1993) or indeed to help further ‘consistency’ and good behaviour, as seen in the ethos of Lowood, the Victorian boarding school/de facto orphanage that nearly claims the life of Jane Eyre.⁵⁷

As I argue in later chapters, little about othering or ‘bastardy’ was unique to any given era or jurisdiction. Ireland’s ancient Brehon laws on issues of succession, for example, offer an interesting contrast to those seen elsewhere, around the same time. Irish customs focused more upon the proving of genetic paternity than the presence of legal wedlock to evidence the ties of

⁵³ Radin, Max ‘The Exposure of Infants in Roman Law and Practice’ *The Classical Journal* (1925) 20 (6), pp. 337–343, p. 339.

⁵⁴ Redford, Donald B ‘The Literary Motif of the Exposed Child’ *Numen* (November, 1967) 14 (3), pp. 209–228.

⁵⁵ Patterson, Cynthia ‘Not Worth the Rearing’: The Causes of Infant Exposure in Ancient Greece’ *Transactions of the American Philological Association (1974–2014)* (1985), 115 pp. 103–123.

⁵⁶ King, Walter J., ‘Punishment for Bastardy in Early Seventeenth-Century England’ *Albion: A Quarterly Journal Concerned with British Studies* (1978), 10 (2) pp. 130–151.

⁵⁷ Bronte Charlotte, *Jane Eyre*, (1847) p. 19, as advocated by Brocklehurst, the Supervisor, when he extols the moral (but also highly cost-effective) virtues of ‘hardy and active habits’ (which quickly translate into life-threatening cold, hunger, and endemic fatal illnesses for his students).

kinship.⁵⁸ Barriers to lawful inheritance still existed (such as gender) but brick walls could also arise from a wide variety of othering circumstances surrounding the child's conception or abandonment (or indeed from the bad behaviour of a son towards his father (Hickey 2020),⁵⁹ demonstrating that familial duties had to be respected). Paternal ancestries had to be both identifiable and certain, so that any 'undeserving heirs' would not dare to attempt illicit inheritance of the family's fortune or steal their good name.⁶⁰ The thinking behind all of this might have been grounded in a desire to preserve respectability, but similar logic can be applied to the need to ration finite or scarce social resources, and prevent overpopulation.⁶¹ Equally, such an exclusionary regime would have helped entrench the sociocultural superiority of those who—having been able or willing to visibly embrace the 'propriety' of legitimacy via marriage or obvious genetic connection—were clearly more open to abiding by social, legal, customary, or religious strictures, and therefore seen as loyal, worthy citizens (a theme seen also in Chapter 5). Conformity matters: to be visibly other is to risk expulsion from one's family or community. Many folk and fairy tales reiterate this message, pointing out the need to defend against the presence of the apparently treacherous imposter or the unexpected return of an abandoned or rejected child.

2.3 Protection Against Others and Othering: Fear of the 'Changeling'

...strength of belief in the fairies had dangerous potentialities.

—McGrath, Thomas 'Fairy Faith and Changelings: The Burning of Bridget Cleary in 1895' *An Irish Quarterly Review* (Summer, 1982) 71
282 pp. 178–184, p. 178

⁵⁸ Hickey, Cormac T 'Bastardy—The Stain of Illegitimacy in Medieval Ireland' *History Ireland* (2020) 28 (1) pp. 14–16. The need for wedlock before pregnancy would soon become all encompassing, as Chapter 4 sets out.

⁵⁹ Ibid. Respectability mattered too, so that 'the sons of underage girls (since the girl's family would not have consented to the union) and prostitutes were also barred from inheriting,' Hickey notes further that because 'all that mattered under Brehon law was that paternity was clear... numerous categories of sons ...were barred from inheriting their father's property.' These included the *mac muine* (son conceived in the bushes), the *mac raite* (an abandoned child taken into the house), and the *mac tointen* (son of two potential fathers).

⁶⁰ Francus, Marilyn 'Virtuous Foundlings and Excessive Bastards' *The Eighteenth Century* (2008) 49 (1), pp. 87–94 p. 90.

⁶¹ King, Walter J., 'Punishment for Bastardy in Early Seventeenth-Century England' *Albion: A Quarterly Journal Concerned with British Studies* (1978) 10 (2), pp. 130–151, p. 133.

Even the fae folk seemed to understand the occasional need to jealously guard finite, scarce resources and protect the sanctity of familial things: 'Fairy bread never diminished, provided it was not shared with strangers, for generosity stopped at the family threshold.'⁶² Given that rejected, banished descendants could suddenly appear from nowhere to violently seek redress (or wreak havoc by making off with inheritances meant for legitimate others), it is hardly surprising that 'magical' protective actions had to be taken sometimes to stave off harm and secure their exile. Arcane forms of 'magic'—whether in the shape of customary norms, community rules, or superstitious beliefs—were used to reveal or banish such interlopers. The twin protections of family and society, as much folklore warns us, tend to be finite, however, and conditional upon good behaviour. The foundling seeking some form of contact with their estranged kinfolk must be careful to avoid being perceived as the 'dangerous social outsider,'⁶³ who is only out to claim back their 'stolen' birthright or seek retribution against those who had denied them (Harris 1994).⁶⁴ It is unsurprising that much law and custom was so gendered—and intergenerationally harmful—as to ensure that quite often 'the bastard was nobody's son, not even his mother's' (Krause 1969).⁶⁵

This harsh blueprint for dealing with unexpected offspring would resurface in the nineteenth and twentieth centuries, to ensure that forced adoptions were deemed legal and promoted as civilised options. Orphanisation would simultaneously achieve 'moral reform' for the so-called fallen woman and prevent any risk of contact with an unwelcome child later on. Framing reunion as an unsafe event that one should avoid at all costs, is a grimly effective way of concealing illegitimate birth rates and infant abandonments. Unwed mothers could be more easily 'rehabilitated' back into respectable society under such a regime of shaming, secrecy, and denial. This model for infant abandonment required complete severance of kinship bonds: it cast a long shadow in terms of influencing adoption law, policy, and practice in many jurisdictions until fairly recently. And yet, the theme of the rejected other cuts across various literary genres especially when the rejected

⁶² Weber Eugene 'Fairies and Hard Facts: The Reality of Folktales' *Journal of the History of Ideas* (1981) 42 (1), pp. 93–113, p. 87.

⁶³ Neill (1993) *op. cit.*, As with Wilder's portrayal in *The Adventure of the Priory School*, such a character often served as the 'incarnation of anti-social energies associated with his begetting.'

⁶⁴ See further Harris W V 'Child-Exposure in the Roman Empire' *The Journal of Roman Studies* (1994) 84, pp. 1–22.

⁶⁵ Krause, *op. cit.*, p. 50 noting too that 'terms such as "illegitimate" or "child born out of wedlock" were slowly supplanting "bastard" for obvious reasons, although there was a time when "bastard" neutrally identified the status of illegitimacy-of which William the Bastard, the conqueror of England, was proud.'

or abandoned relative returns seeking out truths. The orphanised foundling can therefore represent a.

...titillatingly fluid kin and class affiliation ...on the one hand, and ...fascinating literary genealogy, on the other [to] exert a powerful pull upon the reader-critics' imagination. (Zunshine, 2005)⁶⁶

A common, interlinking thread of fearful yet fascinating otherness connects the concepts of foundling, bastard, and changeling, irrespective of jurisdiction, in both written and verbal traditions, and in law and custom. Where there are significant gaps in the law, these tend to be filled by such things as folkloric wisdoms, social customs, archaic beliefs, and superstitions which influence behavioural norms. In addition to being seen as illegal or immoral, certain frowned-upon events—births outside of marriage, in particular—might also be viewed as having some sort of link 'to witchcraft and sin of the mother' especially if she was also accused of consorting with strange or evil beings.⁶⁷ The origins of such beliefs and practices perhaps lie in our tendency to simultaneously worship and be afraid of our ancestors and their easily angered 'ghosts.'⁶⁸ Fears of encountering such spooky forms of otherness, especially the unseen sort, are long-standing and widespread, going by the many customs and rituals that exist across a diverse range of contexts, to protect against the arrival of unwelcome supernatural others. Lepri (2005), for example, highlighted the need for healing rituals if someone has suffered the loss of ancestral heritage or birthright.⁶⁹ Naming matters too, in terms of warding off any evils that might arise from provoking the lost or forgotten relative (Treide 2004).⁷⁰ Berg (2003) similarly stressed how South African 'beggar spirits'—deficient in familial ties or neglected by their descendants—often posed a danger to the entire community, and not just the guilty or neglectful kinfolk: accusations of witchcraft might also easily follow on from certain incidents.⁷¹ As I have previously argued elsewhere, a wide range

⁶⁶ Zunshine *op. cit.*, p. 505.

⁶⁷ Eberly, Susan Schoon 'Fairies and the Folklore of Disability: Changelings, Hybrids and the Solitary Fairy' *Folklore* (1988) 99 (1), pp. 58–77, p. 60.

⁶⁸ *Ibid.*, p. 58.

⁶⁹ Lepri I 'The Meanings of Kinship among the Esse Ejja of Northern Bolivia' *JRAI* (2005) 11, pp. 703–724, p. 703.

⁷⁰ See further Treide D 'Adoptions in Micronesia: Past and Present' in Bowie F (ed) *Cross-cultural Approaches to Adoption* (2004) Routledge: London pp. 126–141, p. 135 on the role and remit of 'purifying enchantments'; See also Wegar K 'Adoption, family ideology and social stigma: Bias in community attitudes, adoption research and practice' *Family Relations* (2000) 49, pp. 363–370.

⁷¹ Berg A 'Ancestor reverence and mental health in South Africa' *Transcultural Psychiatry* (2003) 40 (2), pp. 194–207, p. 197; See also Carsten J 'Cultures of relatedness; new approaches to the study of kinship' (2000) Cambridge Univ. Press: Cambridge.

of healing ‘rites are sometimes also needed to appease wounded ancestors, placate a disgruntled community or perhaps erase or minimise stigma.’⁷² This theme is repeated across a range of genres, with accusations of witchcraft, monstrousness, and unacceptable otherness, sometimes being levelled at the foundling or orphan, and their mother.

Within many folk and fairy tales, similarly dark messages of warning pepper an otherwise ‘magical’ storyline, involving the brave—perhaps super-heroic— orphan, or a plucky, grateful foundling, especially where they are undertaking an increasingly perilous journey back towards their lost origins or in search of answers and long-buried truths. Abandonment occurs regularly in folklore: destitute parents or parent-figures relinquish their children or expose them to the elements, at times almost casually. Illegitimacy is seldom an issue, however; rather there may be a severe lack of food or money (*Hansel and Gretel*) or jealous stepparent keen to preserve scarce familial resources for themselves or their own genetic offspring (*Little Snow White*, *The Goose Girl*, discussed below). Although stepmothers tend quite often to be the villains of the piece, often ‘the same terrors also lie in wait within the familiar circle, and a lot of folktales acknowledge just how inescapable these are.’⁷³ The filicidal act of exposure could (if the abandoned child survives their ordeal) enable their ‘freeing up’ for an alternative life narrative. Legally kinless, they could then take up the mantle of hero, servant, or slave (Harris, 1994).⁷⁴ The foundlings in such tales sometimes seek out reunion, with some having become monstrous or demonic, either in life or in death, creating a further need for protective rituals (and, as ever, serving as a warning to wider society of the perils of ignoring filial duties). Scandinavian mythologies, for example, refer to the ‘*myling*,’ the vengeful spirit of an abandoned infant set on finding its mother so that it can ‘murder her, often by ripping open her breast with its deadly claws’ (Dennehy 2016).⁷⁵ The symbolism—highlighting her maternal failure to nurture—ignores the role that poverty, or paternal neglect or desertion might have played. The child’s gender could have been a factor, meaning that at times, relinquishment via exposure was ‘in very many cases the consequence of a hard imperative’ (Harris 1994)⁷⁶ which was difficult to disobey

⁷² Diver A ‘*A Law of Blood-ties: The ‘Right’ to Access Genetic Ancestry*’ (2014) Springer: New York, p. 38.

⁷³ Weber, *op. cit.*,

⁷⁴ Harris, W. ‘Child-Exposure in the Roman Empire’ *The Journal of Roman Studies* (1994) 84, pp. 1–22.

⁷⁵ ‘Dennehy Emer, ‘What Damned You?’ Changelings, “Mylingar” and Other Dead Child Traditions *Archaeology Ireland* (2016) 30 (3), pp. 21–25.

⁷⁶ Harris *op. cit.*, adding that ‘no one had anything to be proud of afterwards.’ p. 22.

or challenge, given the financial or societal consequences of certain births.⁷⁷ Even where disowned infants were not actually deemed evil or otherworldly, communities might still have wished—or needed—to be able to remove, orphanise, and irreversibly other them. In Iceland, for example, the population's conversion to Christianity was apparently made subject to several exemptions from Canon law being granted, including the right to continue the customary law practice of new-born exposure, to deal with any unwanted 'surplus and/or illegitimate children, as a means of gender preference selection, or to address any "monstrous" births.'⁷⁸ It was still however generally 'the illegitimate or physically weak or defective' infant (Patterson 1985)⁷⁹ who was most likely to be rejected or seen as a dangerous pretender and thus exposed to the elements. As Radin (1925) described the process under Roman law:

Suppose a man questioned the legitimacy of the child presented to him. Until Hadrian, he evidently could do so arbitrarily. There was a moment at which he made his decision. And if he rejected a child because he professed to believe it illegitimate, he could for any reason—even without reason—since his decision could not be reviewed.⁸⁰

The notion of the imposter within Irish folklore perhaps represents one of the most chilling examples of how otherness might be finely crafted, drawing upon a dangerous, fear-led triad of religious, ominous, and spiritual reasoning (Israelowich 2017) to justify infanticide, or the abuse of unwanted children. Even their burials speak to indignity and deeply stigmatising otherness.⁸¹ The backdrop to this might have been the belief that the fae folk had the apparent ability to easily 'enter our own world, and sometimes to steal human children away from it' (Hutton 2014),⁸² leaving one of their own behind in their stead. Some folklore tells of how certain beings would happily relinquish their own offspring to the much better-off human family in the hope that being

⁷⁷ The laws and customs of Classical Antiquity have much to answer for too. As Brosnan (1922) observed, 'To trace adoption historically is an interesting commentary on racial and national life. Roman law is the unquestioned source of our adoption statutes of to-day.' Brosnan, John Francis 'The Law of Adoption' *Columbia Law Review* (1922) 22 (4), pp. 332–342.

⁷⁸ Dennehy *op. cit.*, p. 21.

⁷⁹ Patterson *op. cit.*, p. 107.

⁸⁰ Radin, *op. cit.*, p. 342.

⁸¹ Israelowich Ido, 'The extent of the "*patria potestas*" during the High Empire: Roman midwives and the decision of "*non tollere*" as a case in point' *Museum Helveticum*, (2017) 74 (2), pp. 213–229 arguing also that the concept of *tollere libere* was likely more based upon legend than reality.

⁸² Hutton Ronald 'The Making of The Early Modern British Fairy Tradition' *The Historical Journal* (2014) 57 (4), pp. 1135–1156, p. 1138.

raised by humans would confer greater respectability upon the transplanted faery child.⁸³ This was of course conditional upon their secret fae heritage never being revealed: the changeling imposter would suffer a truly horrific fate if discovered.⁸⁴ Although they might physically resemble the original infant that they had replaced, their odd demeanour and behaviour would generally reveal them as non-human, usurping other. Their warding off—and sharp removal from the family home—demanded elaborate rituals, marked by cruelties: ‘roast it alive on the griddle, or burn its nose off with the red tongs, or ... throw it out in the snow on the road-side.’⁸⁵ The need for such ruthless vigilance underscores just how effective certain forms of ‘imposter rhetoric’⁸⁶ can be. Even where a child was an authentic, genuinely legitimate descendant, if they displayed physical, mental, or behavioural issues—or some form of disability—this might have been attributed to otherworldly influences. The frequent ‘association of the bastard with satanic forces,’⁸⁷ is relevant here too: exposure could therefore be used and justified as a remedial or protective device, to force the changeling out and enable the return of the supposedly lost human infant (if torture with heated fireside implements had not done the trick).

⁸³ Denney *ibid.*, p. 22. Such reasoning calls to mind some of the testimonies offered by survivors of mother and baby institutions in Ireland and elsewhere, where single mothers were strongly ‘encouraged’ to relinquish on the basis that their baby might be better-off raised by a married couple. See further, McCormick et al. (2021) *Mother and Baby Homes and Magdalene Laundries in Northern Ireland, 1922–1990* (<https://www.health-ni.gov.uk/sites/default/files/publications/health/doh-mbhl-final-report.pdf>); The UK’s Joint Parliamentary Human Rights Committee Report (2022) on *The Violation of Family Life: Adoption of Children of Unmarried Women 1949–1976* for England and Wales; (<https://publications.parliament.uk/pa/jt5803/jtselect/jtrights/270/report.html#footnote-061-backlink>) (‘JHRC Report’); *The Mother and Baby Homes Commission of Investigation Final Report* (2021) (<https://www.gov.ie/en/publication/d4b3d-final-report-of-the-commission-of-investigation-into-mother-and-baby-homes>). (‘COI Report’) on The Republic of Ireland. See especially the anonymised summaries of Irish mothers’ testimonies in *The Report of the Confidential Committee to the Commission of Investigation into Mother and Baby Homes* (October 2020) (in particular, pages 86–105 on ‘consent’ to adoption) (<https://www.gov.ie/pdf/?file=https://assets.gov.ie/118671/0df04013-bfc5-4241-b01e-773504253793.pdf#page=null>), which are looked at in more detail in Chapter 4.

⁸⁴ Dennehy (2016) outlines how such infants might be buried ‘within a *cillin* ...or disposed of in privies, dunghills and various other public places...this was such a recognised problem that from the seventeenth century British midwives swore an oath to bury children “in such a secret place as neither hog, dog nor any other beast may come onto it” and that the infant would not be cast into the lanes or any other inconvenient place.’ Likewise, ‘in Ireland, the practice of the prone (face down) burial of infants was ...carried out if the infant was illegitimate (to prevent the father from having more children), or if the infant’s birth had placed the mother’s life at risk.’ One story details the life of an apparent ‘faery foundling’ who was raised by a family (albeit without their name) but having been ‘denied a consecrated burial...was interred in *Lughil cillin*’ and thus remained ‘distanced by the living who loved her and by the dead who feared her, as no one knew who she really was.’ (p. 25).

⁸⁵ Croker *op. cit.*, p. 66.

⁸⁶ Francus *op. cit.*, p. 91.

⁸⁷ Schmidgen *op. cit.*, p. 133.

That said, in some reunion tales the stolen or lost child might eventually, 'magically' return home after having apparently lived 'abroad' for some time with their substitute fae family: acceptance of this odd reunion might not come easy, given how long they had been absent, or if they no longer fitted in well with their original kinfolk, having picked up foreign ways. Certain stigmas could also linger long after the death of the supposed changeling, even where they might have survived into adulthood. Burials for these displaced others would differ profoundly from the norm. They might, for example, have to be held on non-consecrated ground, or at a crossroads, and without the usual religious trappings or customary ceremonies. Equally de-humanising, othering indignities might also be seen if, for example, an infant had perhaps died before having been christened. Such de facto 'laws' and customs were justified on the basis that the aggrieved spirit of the unbaptised child could return from the dead to seek redress, demand belated, proper naming or renaming, and a proper interment. Clearly, where necessary, many of the

practices and superstitions of the old religions influenced the new Christian attitude towards the treatment and burial of children [to] exclude a child from the community of the living and of the dead.⁸⁸

That certain children were shown some degree of pity is underscored by the tradition of leaving some heavily symbolic, protective, or comforting item such as a cup or doll to be buried with them. Echoes of their having been abandoned or disowned in life might also be apparent too, where tellingly mnemonic keepsakes or tokens were left with them to preserve some small breadcrumb links to the original family. Equally, items could serve here as apologetic offerings of appeasement affording them posthumous dignity. Generally, though, a highly visible 'societal and familial rejection marked both their burial and their afterlife,'⁸⁹ as indelibly other. Likewise, certain folkloric wisdoms and messages often represented an important 'part of early man's science and religion' (Pound 1952).⁹⁰ Given their wide reach and level of influence across differing eras, cultures, and social classes (Dorson 1963),⁹¹ it

⁸⁸ Dennehy, *op. cit.*, 21.

⁸⁹ Dennehy *op. cit.*, p. 25.

⁹⁰ Pound Louise, 'The Scholarly Study of Folklore' *Western Folklore* (1952) 11 (2), pp. 100–108, p 101 (looking to Lithuania, Lapland, Flanders, Bohemia, Sicily, Greece, and Russia).

⁹¹ Dorson, Richard M 'Current Folklore Theories' *Current Anthropology* (1963) 4 (1), pp. 93–112 adding that '...one paradox of folklore studies is seen in their shuttling back and forth between opposite poles of emphasis. The materials of folklore lend themselves equally to comparative, international, or cross-cultural theorizing and to inward, national self-appraisal. The comparative approach

seems fair to view them as akin to those customary, *de facto* laws that offered warnings and guidance on how to behave in difficult situations involving parenthood, familial obligations, and the treatment of those deemed other or 'less than.' Tales involving changelings called for extreme vigilance and prescribed ill-treatment or infanticide as a means of protecting legitimate family members from the evil influence of the perceived imposter. Achieving reunion with one's own, long-lost, illegally stolen-away child was often the end-goal in these stories: homicidal responses on the part of the rejecting parent were seen as justifiable if they restored order to the sacred spaces of the family home. Those who dispensed such sage advice tend to be elderly or 'wise' women (occasionally, men) who were viewed by their own communities with a mixture of respect and deep unease. As eerily gifted 'cunning folk,' they were sometimes seen as having belonged to the faeries themselves at some point. Some were thought to be still connected to an unseen, foreign world, which presumably gave them some added clout if decision-making subsequently amongst humans. They would typically act as go-betweens between the two realms of human and fae—or indeed perhaps, old family and new—withholding or dispensing vital knowledge as they saw fit, to resolve quarrels or end grudges involving unseen spectres, or to help resolve long-held guilt.⁹² The arcane knowledge of these wise intermediaries could enable reunion with long-lost children, banish the unwelcome intruder or interloper, and protect the legitimate family from future interferences. Arguably, their roles and remits are not entirely dissimilar to those of modern-day jurists, social workers, and legislators. They hold a similar power to set down rules and offer guidance, and make tough decisions on child relinquishment, welfare, and the severing of birth family connections. They can enable or prevent adoptions (via the 'sorceries' of law or policymaking) by using convoluted legal rituals that can erase or alter natal identities, place bars on kin contact, and seal or open up birth records. The wise counsel of the helpful go-between, then as now, tends to stress the need for patience, forgiveness, and gratitude on the part of the foundling. Significantly, they might also remind those who wield the most power—the state, the churches—of their duty to acknowledge historic wrongs and harms which were occasioned or overseen by them in the past, so as to encourage some form of redress or healing.

stresses the unities and common themes of folklore in many lands, and the nationalistic approach concentrates on the distinctive qualities of the folk traditions found with in one country. Where the national folklorist sees in a proverb of common coin the indelible stamp of his people's wit or sentiment, the comparative folklorist dryly points out that the same saying is found in a dozen languages' (96).

⁹² Croker *op. cit.*, p. 23.

There is a degree of 'magic' within the various sociolegal processes that enable truth recovery and provide some measures of restitution. The hearing of victim testimonies, oral or written can help appease aggrieved, excluded others, or eventually lead to some form of redress. The dissemination of narratives can challenge long-held—often dangerous—assumptions, for example, that child relinquishment was—or is—always consensually or readily done.⁹³ The findings of truth commissions can, like some folk and fairy tales, be downright terrifying, especially so perhaps where they contain verbatim accounts that give voice to those who would otherwise remain unheard and unseen (as Chapter 5 argues). The next section looks to folk and fairy stories that involve infant abandonment, rejection or reunion, to argue that sharp warnings against searching or making contact are everywhere, and that resolutions (should they occur at all) are often complex and less than satisfactory. Some of the warnings could also be applied to the investigation of historical wrongs and abuses within the field of adoption. These too may result in highly imperfect endings, for example, where apologies are not forthcoming⁹⁴ or profoundly inadequate.⁹⁵

2.4 Double-edged Ever-afters and Uncertain Step-[m]otherings: 'Fairy Tale' Endings and Warnings

Even as fairy tales ultimately debunk magical thinking, showing that it works only in the realm of story, they also affirm the magical power embedded in language, the way that the ability to use words can grant a form of agency

⁹³ See, for example, such cases as *Seddon v Oldham MBC (Adoption Human Rights)* [2015] EWHC 2609 (Fam); *Re Z (A Minor: Freeing for Adoption)* (2022) NI Fam 1; *R. and H. v. the United Kingdom*, (2011) no. 35348/06; *In the Matter of TM and RM (Freeing)* [2010] NI Fam 23; *Re W (An Infant)* [1971] 2 AER 49; *Re C (a minor) (Adoption: Parental Agreement, Contact)* [1993] 2 FLR 260; and *Down and Lisburn Trust v H and R* [2006] UKHL 36.

⁹⁴ See, for example, the UK's Parliamentary Joint Committee on Human Rights 'The Violation of Family Life: Adoption of Children of Unmarried Women 1949–1976' (England and Wales) at <https://committees.parliament.uk/publications/23076/documents/169043/default/> which has failed to produce an apology on the part of the state. For an NGO response, see <https://movementforanadoptionapology.org/jchr-report-15th-july-2022/>. For the UK Government's equivocal response to the Report's findings, see <https://committees.parliament.uk/writtenevidence/108766/default/>.

⁹⁵ See further Short, D 'When sorry isn't good enough: Official remembrance and reconciliation in Australia' *Memory Studies*, (2012), 5, pp. 293–304; Fronek P and Cuthbert D 'Apologies for Forced Adoption Practices: Implications for Contemporary Intercountry Adoption' *Australian Social Work* (2013) 66 (3), 402–414.

unknown to the child who has not yet fully developed the capacity to use language.

—Maria Tatar, 'Why Fairy Tales Matter: The Performative and the Transformative' *Western Folklore* (2010) 69 (1), pp. 55–64, p. 57

As Davidson has argued of the fairy tale, often '...the relationship between folklore and literature [is] a complicated one' (1975).⁹⁶ This is evidenced by the way in which 'certain folktales have achieved considerable longevity,' resurfacing in both classical works and popular culture, across differing eras and settings, and provoking a wide variety of interpretations.⁹⁷ They frequently also 'tell us a great deal about real conditions in the world of those who told and those who heard the tales.'⁹⁸ They can offer useful insights into the workings of human nature, especially where familial or societal abandonment and othering has occurred, regardless of era. Given their timelessness, they can also reveal much about the world we currently inhabit, in terms of our own current laws and rights frameworks, social customs, traditions, and any lingering, unconscious biases against those who we cast out or label as other. Some stories involving rejection by kinfolk—even where there might eventually be some form of subsequent reunion—can be 'far more realistic than might appear at first sight.'⁹⁹ They may demonstrate too just how profoundly human emotions—fear, jealousy, guilt, anger, or gratitude—can affect the outcomes of encounters with feared, folkloric others.

To further complicate matters, some of the earliest iterations of certain stories could 'in the same decade provide material for sweet poetic whimsy and for a charge of witchcraft.'¹⁰⁰ From the perspective of the foundling or orphan who searches for origin, these conflicting messages—on the need for caution, bravery, resilience, and gratitude—seem apt. Narratives involving reunion are often tinged with sadness and joy in equal or unequal measure: they will almost always also contain sharp warnings. Meetings with strangers or unknown relatives can be fraught with danger: uncovering long-buried truths or revealing familial secrets can come at a steep price. Dark imageries remind the reader/listener that fairy tales—and their mixed blessing

⁹⁶ Davidson, H R Ellis 'Folklore and Literature' *Folklore* (1975) 86 (2) pp. 73–93, p. 74 highlighting how there was '...a sudden change of attitude towards the hitherto despised fairy tale, as a result of the Brothers Grimm and their followers.' p. 76.

⁹⁷ Ibid., p. 83. For an interesting discussion of the different types of elves and faery, see Simpson, Jacqueline 'On the Ambiguity of Elves' *Folklore* (2011) 122 (1), pp. 76–83.

⁹⁸ Weber, Eugene 'Fairies and Hard Facts: The Reality of Folktales' *Journal of the History of Ideas* (1981) 42 (1), pp. 93–113.

⁹⁹ Davidson *op. cit.*, p. 84.

¹⁰⁰ Hutton *op. cit.*, p. 1152 (referring to the Jacobean period).

endings—often therefore represent a ‘folk version of the gothic and remind us that wonder and horror are just a vibration apart.’¹⁰¹ Indeed, some of the best-known fairy tales involve a heroically epic yet dreadful journey, possibly self-imposed, and often aimed at answering the protagonist’s ‘need to be able to feel fear’ (Bettelheim 1976)¹⁰² so that they might achieve justice or a better understanding of their plight. The need to embrace and address unspoken anxieties—rather than deny or ignore them—is a common plot device. Reunions between estranged kin may however be conditional upon one or more parties having to significantly change their behaviours or adjust their outlook. For example, achieving a new-found gratitude, sense of humility, or an ability to show forgiveness or compassion can serve to open long-barred doors or reveal secrets that were previously, perhaps mystically, sealed away.¹⁰³ Psychology matters too: as Tatar (2010) has argued, the young reader who engages with the dark terrors of the fairy tale can potentially become so empowered that they begin to develop a greater degree of autonomy or agency.¹⁰⁴ This may be so even where they lack the means to give proper voice to their inherent fears. Though not specifically referencing adoptees who embark on searches for ancestry or quests for reunion here, her logic seems relevant to those who may have decided to try and uncover key truths—dark or otherwise—about their origins. Many of the older, folkloric stories warn us too that wish-fulfilment can often only come at a too-high price: in this regard, they do represent a timeless, ‘major mode of contemporary imaginative discourse,’¹⁰⁵ which can move us beyond glib, easily achieved ‘happy ever after’ resolutions.

Though they tend to stop short of warning against origin searches altogether, most narratives do signpost the various difficulties likely to be encountered along the way. Crucially, they remind us that many ‘fairy tale’ endings—in the original sense of the early, darkness-set folkloric tales—are likely to be profoundly bittersweet things rather than purely joyous events, for all concerned.

That said, in myths, the ending is ‘nearly always tragic,’ whereas with fairy tales there may well be a ‘feeling of consolation’ at the story’s close.¹⁰⁶

¹⁰¹ Attebery Brian., “Introduction: Tales of Faëry and Wonder.” *Journal of the Fantastic in the Arts*, (2017) 28 (1) (98), pp. 1–3, p 2.

¹⁰² Bettelheim Bruno ‘*The Uses of Enchantment: The Meaning and Importance of Fairy Tales*’ (1976) Vintage: New York, p. 280.

¹⁰³ See, for example, *The Goose Girl*, in *Grimm’s Fairy Tales (1812)* (2014) Red Skull, p. 111.

¹⁰⁴ Tatar *op. cit.*, p. 63.

¹⁰⁵ Attebery *op. cit.*, p. 2.

¹⁰⁶ Bettelheim *op. cit.*, p. 37.

Even amongst the more horrific tales involving abandonment and infanticide, there are still some uplifting ‘long-lost relative’ fables to be found. These include ‘recognition scenes and happy endings,’ which regularly ‘punctuate the ancient literature’ even in connection with the not-terribly uplifting subject of exposure.¹⁰⁷ The study of folklore and fairy tales still offers a useful means of exploring the concept of the dangerous ‘stranger-relative,’ carving a sort of pathway towards deeper understanding of how certain stigmas can still arise from being identified and then excluded as other. In sum, most fairy tales—even those with ostensibly positive endings—are not as sunny as Disney would have us think.¹⁰⁸ Archaic stories of the exiled other—whether in the form of docile stranger, unknown relative, or frightening imposter—generally draw upon the customary laws, norms, and superstitions of the time, and may well underscore the need to achieve some form of retributive justice. Then as now, certain works of fiction warn of the dangers of seeking to challenge deeply ingrained sociocultural beliefs and traditional norms of behaviour. The seeking out of buried truths is an especially risky activity. For adoptees contemplating searches or reunions, the expectation of a joy-filled welcome can be a dangerous one given the possibility of secondary rejection. The complexities and vagaries of law and family life, especially where abandonment, relinquishment, secrecy, shame, or stigma formed part of the narrative, must also be factored in.

The use of curses, spells, and charms in many stories involving search or reunion¹⁰⁹ might well resonate with those who have searched or hope to do so. Within some tales, incantations can achieve much more than some of the key earthly—or legally ‘sacred’—rituals needed to alter one’s legal status or social position (such as will-making, marriage, divorce, legitimization of birth status, or adoption). The often-double-edged literal magic of the fairy tale might spark actual physical changes in one or more characters, for better or worse. The miraculous removal of infertility is a common example, and an adoption-relevant theme, alongside those of stigma and secrecy. Many such ‘cures’ only come at a high price, however (*The Juniper Tree*). The infant obtained or created outside of normative laws or customs—via arcane or magical intervention—may not dwell happily amongst ordinary humans, or they might possess characteristics of otherness. They might face peculiar hardships that set them apart, or leave them indebted to others (*Sleeping Beauty*,

¹⁰⁷ Harris W V ‘Child-Exposure in the Roman Empire’ *The Journal of Roman Studies* (1994) 84, pp. 1–22, p. 2.

¹⁰⁸ As Attebery *op. cit.*, noted, often, ‘happy endings arrive only after the hero is isolated, threatened, maimed, or even rendered monstrous by sorcerous relatives.’ p. 2.

¹⁰⁹ Tatar *op. cit.*, p. 60.

Rumpelstiltskin). They may have to endure a difficult relationship with a stepparent or suffer the loss of kinships or a home place. Stepparenthood is especially fraught with difficulties, often going hand in hand with an apparent propensity for child abuse or infanticide (*Little Snow White*, *Cinderella*).

Although some of the sorceries and strategies seen within folkloric tales can occasionally 'change the hearts of the characters,' they are more likely to reveal long-hidden truths, such as the true nature or identity of those who have behaved badly in respect of their familial obligations.¹¹⁰ Perhaps because of this, many of the protagonists engaged in searching for answers to problematic truths—on their true heritage, or the reasons behind their abandonment—will often have a less than straightforward ending to their story. They may instead achieve a reluctant 'acceptance of the situation as it is,'¹¹¹ which could be viewed as usefully pragmatic piece of wisdom for anyone afflicted by one of the informational brick walls (sealed birth or adoption records, parental vetoes) that can stymie access to original information for many adoptees and donor conceived persons.

The potentially somatic effects of harsh words—and labelling—merit mention here. These can cause the sort of lasting traumas akin to those seen in certain fairy tales, especially within familial contexts, and particularly where parental abandonments or rejections have occurred at some point.¹¹² Various tales gathered and collated by the Brothers Grimm were quite given to such scenarios, highlighting the harmful physical consequences of engaging in 'spellcasting' or making accusations that carry stigma. Such narratives often had as their backdrop dark woods or deep bodies of water, symbolising some of the barriers that might prevent a return to the original family in the wake of orphanisation. Psychoanalytical theories are relevant here too. Bettelheim's analysis of *Hansel and Gretel* sees 'the debilitating consequences of trying to deal with life's problems by means of regression and denial,'¹¹³ as counselling against attempts to return to—or somehow recapture—the perceived safeties of long-lost infancy. As the two orphanised children in this story found, reunion is seldom straightforward. The reason for their abandonment was, as seen in some cases of exposure, grounded in abject poverty. The difficulties of their search for their original home—represented by the various trails left by an industrious Hansel—could be seen as analogous to the sparse, easily destroyed clues to identity, that could—if adoptees are able

¹¹⁰ Davidson *op. cit.*, p. 84.

¹¹¹ Ibid., p. 84.

¹¹² Tatar *op. cit.*, p. 61 argues however that only in fairy stories can words cause such physical, somatic effects.

¹¹³ Bettelheim, p. 160.

to access them—lead back to natal origins. As the Grimms warn us however, a much more likely outcome would see such breadcrumb trails quickly eaten up by the ‘guardian’ birds of the forest. It is no coincidence that, in such tales generally, these symbolic keepers of secrets and hidden knowledge also oversee the welfare of the lost or rejected children in some way.¹¹⁴ Here, they lead the siblings deeper into the woods and direct them towards a ‘substitute home,’ namely the witch’s gingerbread house. If this edible dwelling ‘stands in the unconscious for the good mother’¹¹⁵ (given that their original mother’s abandonment was motivated by hunger), then it makes sense that these orphanised children must eventually destroy it, and escape the litany of dangers associated with staying there. Only afterwards might the woods—symbolising society, or the care system perhaps—eventually grant them safe passage back to their original home (which was itself far from satisfactory or safe, it has to be said).

Even where a journey back to the original family or parent has been successful, there is no guarantee that a reunion will go well. Hansel and Gretel are able to reconnect with their father only after they have dispensed with the witch, their ‘substitute carer,’ which in turn allows them to offer him a way out of the poverty that triggered their abandonment. They share with him the riches that they inherited (or perhaps stole) from her. Bettelheim argues that their punishing treatment of the witch is quite justified—her expectations of good behaviour from them were unfair given their tender ages and their adverse experiences of having been abandoned and half-starved by their birth parents. They were expected to change themselves utterly, to fit in to her household and fulfil her list of demands: there is clearly a price to be paid for being rescued from the woods and from the original, neglectful family. The need for the siblings to be literally consumed (firstly by the oven, then by the ‘hungry’ substitute mother figure) could be said to symbolise the losses of original identity demanded by the law in closed, sealed records adoptions: name changes, bars on familial contact, and a loss of ancestral information. Though they are initially happy, warm, and well fed in the substitute home, Gretel must visibly and physically express her gratitude and loyalty via cleaning and toiling. Hansel is imprisoned and fattened up for eventual sacrifice, ostensibly to make up for their having eaten or damaged bits of their new home. They must both conform and earn their keep to remain a part of this new, punitive, and carceral arrangement. Only by mimicking the tactics and murderous mindset of the witch/foster mother can they survive and escape. While not wishing here to associate adoptive parenthood with

¹¹⁴ Birds guide them to the witch’s house, and a duck helps them get home.

¹¹⁵ Bettelheim *op. cit.*, p. 161.

the psychotic mothering style of the witch in *Hansel and Gretel*, it can be argued that certain normative aspects of the adoptee experience can be seen: having to renounce previous, natal identities, enduring separations from one's siblings, and modifying certain behaviours to try and fit in with the new family to enable survival and acceptance. Resilience matters, as does self-reliance. It is these traits that finally enable the children's continued existence—and escape from the hidden harms of 'the system'—not to mention their eventual reunion with their father. Their experiences, in Bettelheim's view, do lead eventually to 'growth toward a higher plane of psychological and intellectual existence.'¹¹⁶ His analysis does not however focus specifically upon the de facto adoption of the children by the unhinged witch: rather, her home—superficially comfortable, initially comforting—is, for him, conflated with the inadequate one of the original parents. This means that, to his eye, the children's trials and acts of independence should be interpreted as essential aspects of an average, non-adopted childhood, which seems slightly odd. Their new-found capacity for violence, he argues, is ultimately self-directed, and necessary to quell their own childish greed and unrestrained hunger, rather than a handy mechanism for defeating a witch who is seemingly set on their destruction.

Their later actions are, apparently, best understood as a marker therefore of how much they have matured, leaving the helplessness of their infancy behind, and becoming more useful to wider society and to their original, surviving parent, particularly given that they return armed with their hard-won fortune. Such an analysis ignores the facts of their relinquishment and 'adoption' becoming instead a parable on the need to mature out of one's childhood, just as 'kept' children must also manage to do. It is significant however that their neglectful original mother has mysteriously and conveniently passed away some time prior to their returning home. This makes the reunion much less fraught than it might have been, had she had to face being held to account for her role in urging the father to subject the children to murderous exposure. Bettelheim's analysis also suggests that the children should, with hindsight, be quite grateful for the experiences that enabled them to survive their childhood by leaving behind their apparently 'selfish' urges (such as wanting to be adequately fed and looked after in the original home, and not roasted alive or enslaved in the substitute one). Much of his work includes quite worrying theories on the apparent benefits of some form of parental abandonment or rejection in infancy, for example in terms of helping the children realise that their separation anxiety is a needless response,

¹¹⁶ Bettelheim, p. 165.

rather than a 'well-founded' reaction to having been left alone and unparented or neglected and exposed to the elements.¹¹⁷ As Weber (1981) observed, children in these tales who are already vulnerable or marginalised constantly face situations of.

...hunger, poverty, death, danger, fear, chance There are many orphans; there are wicked stepmothers, stepsisters, and mothers-in-law; there are poor children who have to go out into the world...wild animals and outlaws and frightening spirits-forests...provide a refuge, but [their] darkness breathes danger.¹¹⁸

There is perhaps a little too much darkness-breathing danger in the story of *Hansel and Gretel* for it to be seen as a perfect analogy of—or parable on—the dangers of adoptive placements generally, but aspects of the story are likely to resonate with at least some adoptees. Had the original parents been able to access some means of financial support, the children's relinquishment might not have happened. Likewise, had the siblings been placed into separate substitute homes, they might not have survived their various ordeals. If they had not returned to their original home 'armed' with their new-found wealth, capacity for forgiveness, and hard-won self-sufficiency, they might not have been equipped to engage in familial reunion quite so successfully.

It is noteworthy that the tendency to severely critique 'bad' motherhood, adoptive or natal, was not exclusive to Bettelheim. Original maternity in many works of literary fiction may be quietly erased or excised, regardless of era, via relinquishment, imprisonment, or an untimely death. The appearance of a wicked stepmother (or, at times, a helpful fairy godmother) can then work to underscore the apparent 'permanence' of the original mother's disappearance. Stepmothers in most fairy tales serve as de facto adoptive mothers: they are often prone to misbehaviour and painful comeuppances if they exile or murder the children that they have been tasked with caring for (*The Juniper Tree*, *The Six Swans*, *Little Snow White*, *Cinderella*, *Hansel and Gretel*¹¹⁹). As Kirkman and Letherby (2008) summarise:

¹¹⁷ Weber Eugene 'Fairies and Hard Facts: The Reality of Folktales' *Journal of the History of Ideas* (1981) 42 (1), pp. 93–113.

¹¹⁸ Ibid.

¹¹⁹ See further on how an early version of the Hansel and Gretel used the term mother rather than stepmother, however.

The villains of the piece are often women...bad women in every way, with their "otherness" frequently compounded by the unnaturalness of their relationship to our heroines, such as a step-parenting relationship.¹²⁰

Otherness, it seems, can be inherited and intergenerational. Gilbert and Gubar's (1979) seminal analysis of the stepmother figure—in *Little Snow White*—avoids framing her as an adoptive mother. She is indeed scarcely acknowledged as a stepmother: they posit instead that she can be better understood if viewed as being one and the same with the original mother. In other words, having given birth, the first mother quickly 'metamorphoses ... into a witch—that is, into a wicked "step" mother.'¹²¹ This makes the story almost entirely about the troubled relationship between mother and daughter, with 'one a sort of angel, the other an undeniable witch.'¹²² Even the figures of mother and daughter can be conflated here apparently, to be potentially viewed as twin aspects of a singular person, though more at the expense of the child's persona than that of the parent: 'Snow White, as her daughter, is a part of herself, she wants to kill the Snow White in herself, the angel who would keep deeds and dramas out of her own house.'¹²³ As ever, the sacred space of the house or home, is prioritised, to the extent that even the child with a 'legitimate' claim to dwelling there, can be excluded or banished to maintain the peace.

Gilbert and Gubar's evaluation overlooks a key aspect of this typical folkloric scenario: the stepmother figure is often very clearly a de facto adoptive mother, with the power to decide the fate of her new children. Where the father figure has remarried—as many stories makes plain, even across various iterations—then the stepmother cannot be read as simply a modified version of the original mother, who somehow became monstrous after giving birth to her first child. Framing the stepmother in *Snow White* as an adoptive mother raises some uncomfortable questions and issues however: might she have behaved a bit less murderously had there been a bond of genetic kinship between them? Her counterpart in *Cinderella* is similarly prejudiced against the titular adoptee/foster child, favouring her own daughters over her (though, in fairness, some versions of this tale have her exhibiting

¹²⁰ Kirkman M and Letherby G 'Some "Grimm" Reflections on Mothers and Daughters: A Fairy Tale for Our Times' *Journal of the Association for Research on Mothering* (2008) 10 (2), pp. 196–210, p. 198.

¹²¹ Gilbert S M and Gubar S '*The Madwoman in the Attic: The Woman Writer and the Nineteenth Century Literary Imagination*' (1979) Yale University Press: New Haven, p. 37.

¹²² Ibid., p. 36.

¹²³ Ibid., p. 39.

abusive traits against them as well).¹²⁴ A ‘threatening’ ancestry may be to blame, given that certain genealogies can scream ‘rightful heir’ or offer social respectability via a direct link to the deceased or absent original parent, who was often characterised by a decent fortune, kind heart, or both.¹²⁵ The need to recover truths about one’s ancestry is the central issue, driving the narrative and underscoring the unjust nature and profound impacts of being deprived of origin and the sometimes protective ‘magic’ of natal kinships.

In the absence of helpful law or policy, ‘original’ magic can attach to certain objects that are often ‘see-through’ or reflective; they can reveal hidden realities or emphasise lies, cruelties, or subterfuges surrounding identities, or poor parenting. There are abundant glass slippers, transparent coffins, and enchanted mirrors, all of which tend to speak uncomfortable truths—sometimes literally—directly to those who hold some form of power.¹²⁶ Reflections are significant, not least in *Snow White*, where the pronounced lack of ‘genetic mirroring’ takes on a darkly sinister, lethal aspect. Arguably representing justice, or the intervention of some legal process, the mirror reveals Snow White’s true identity and destiny: she will soon usurp the Queen’s position, echoing the fears associated with the arrival of changelings or illegitimate offspring who, as discussed above, are often seen as threats to the established order of things and to the laws of inheritance. Other objects are richly symbolic of parenting gone awry: the Queen attempts to kill her stepdaughter through acts associated with maternal care. As in *Hansel and Gretel*, she is fed, but the food is toxic: she is clothed, but the laces of the dress stop her breathing. Even an act normally associated with care and affection—the combing of her hair—is rendered dangerous by a poisoned comb.

Other stories have similarly magical devices capable of recording testimonies and enabling the discovery of hidden truths or the righting of wrongs. In, for example, *The Goose Girl*, natal ancestry is evidenced and preserved by a few drops of blood placed on a handkerchief, arguably representing a sort of birth certificate, if not also the protections associated with having a proven, authentic heritage. These were much needed, given that she had to endure a perilous journey through the woods, under the care an abusive substitute mother figure, represented by her maid. Once the handkerchief is lost—it falls into a stream without her noticing—she completely loses her

¹²⁴ *Jane Eyre* continues the theme of the violent adoptive sibling and cruel substitute mother figure.

¹²⁵ Again, restoration of the lawful heir is a common trope in certain Victorian orphan narratives (e.g. *Jane Eyre*, Hareton Earnshaw in *Wuthering Heights*). In dystopian works, even where genealogies have been overwritten or deemed inconsequential, there is usually still an epic, troubled search for truths and answers to hard questions.

¹²⁶ Gilbert and Gubar, *op. cit.*, p. 37.

identity and social position to her new carer, who impersonates her and then exiles her from polite society. Her vow of silence is key to her survival, as is her assumption of a false identity to remain alive: she must mask any physical characteristics that might identify her ancestry (golden hair) and fend off unwelcome physical contact, albeit with the help of magic words. Truths do eventually come out, but only with the help of a talking horse's head (murdered and wall-mounted, a useful conduit that would probably be difficult to ignore, in fairness) and the intervention of a kindly but powerful monarch. He enables her to keep her promise to remain mute on the issue of her ill-treatment, by having her talk to a stove, which is a pragmatic re-interpretation of the usual 'laws' on oath-keeping. Reunion and restitution are achieved, but only via these elaborate machinations, magical and non-magical, which together circumvent the norms of sworn secrecy.¹²⁷ The stove and its sound-carrying pipes arguably represent the sort of intermediary who can receive and preserve confidential information but then transform it later into precious, useful bits of identifying knowledge, through the exercise of wise discretion. Parallels with adoption searches can be implied here: online reunion registries and DNA testing tend to circumvent the laws and policies on sealed or falsified records, donor anonymity, or maternal vetoes. It is however the magical revelations made by the sacrificial horse's head that enable the slightly more mundane acts of confession, testimony-taking, and information release.

Without such supernatural intervention and practical protections, the key truths about her ancestry—and the injustice surrounding her ongoing exile and mistreatment—would have remained forever hidden, through her fear of breaking her sworn oath of secrecy. Why she honours such an undertaking—made to a profoundly abusive substitute caregiver—seems to be largely down to her sense of honour or gratitude, and a desire to survive the ordeal. She accepts a very different station in life, amongst strangers, from whom she must keep hiding and denying her true, original identity. She does this mainly because, to her mind, she has no other option, but possibly also because she seems blindly, oddly, grateful that her life was spared by her abuser. Clearly, the emergence of truths, redress, and rights often requires some form of sacrifice, the bending of some established rules, or a departure from customs. As here, a 'magical' intervention—legal, social, or scientific—might be required especially where there is a need to gather sensitive testimony and uncover

¹²⁷ In keeping with the 'happy ending' via retributive justice model, many such narratives, the usurping, abusive caregiver is punished harshly by being encased in a nail-studded barrel and rolled through the streets until she dies: this was the penalty she herself had suggested for someone guilty of the same offences which she had committed.

unpleasant truths to achieve some form of redress or reparation. Close readings of certain archaic stories and fables involving abandoned children who later attempt search or reunion can thus make for a ‘valuable analysis, emphasizing in particular an ambivalence of identity’¹²⁸ or the need for truths about one’s lost origin.

The Grimms’ legacy is especially significant, having sparked ‘the whole range of the modern fantastic, from Gothic fiction to pseudo-Medieval romance.’¹²⁹ Across such varied contexts, the double-edged concept of the ‘fairy tale ending’ has clearly survived, though it has taken on highly divergent meanings, particularly when seen from differing perspectives, and especially where some form of orphanisation has also occurred (via bereavement, rejection, abandonment, or loss of natal identity). The tales do set out certain ‘laws’ that are relevant to the concepts of orphanisation and otherness, and which have lingered on, to offer some perennial bits of guidance. There is, for example, much danger associated with allowing an unknown, fearful other into the revered family circle. Likewise, various harms—and types of injustice—can flow from child abandonment or the concealment of important truths. Many narratives also tend to deliver chilling warnings on the potentially disastrous consequences of disowning or mistreating one’s kinfolk, and failing to respect familial duties. Though many tales were very heavily bowdlerised by those who transcribed and compiled them (removing vulgar or lewd language and overt references to sexual activities),¹³⁰ many disturbing but telling details have survived. So too have some vivid depictions of the violent forms of retribution suffered by abusive parents, whether natal, step, foster, or de facto adoptive.¹³¹ These offer rough but workable (albeit somewhat terrifying) blueprints for the navigation of reunion journeys, by highlighting the unjust, often indelible nature of othering, and by warning those who have been othered of the difficulties—and dangers—of attempting search and reunion. Many sociocultural prejudices and stigmas are still associated with having unknown ancestry. Adoptees seeking out original information with a view to contact may find that they must mask their true intentions to avoid frightening off long-lost kinfolk. Gratitude and humility are needed, as ever, as is the ability to respect another’s reasons for maintaining secrecy

¹²⁸ Hutton *op. cit.*, p. 1137.

¹²⁹ Attebery *op. cit.*, p. 3.

¹³⁰ See, for example, Perrault’s version of *Cinderella* and some early versions of *Sleeping Beauty* and *Rapunzel*.

¹³¹ Abate M A “You Must Kill Her”: The Fact and Fantasy of Filicide in “*Snow White*” *Marvels & Tales* (2012) 26 (2), pp. 178–203, p. 182.

or anonymity. The support of gifted intermediaries is often crucial, especially where their interventions amount to near-magical workarounds for unhelpful laws or policies, to open sealed records or enable contact with long-lost (or deliberately absent) relatives. That said, anything too akin to 'sorcery' (DNA-tracing, internet stalking) will likely spark suspicion: turning up unannounced on the doorstep of an elderly ancestor is generally not advisable, especially where they might have relinquished or abandoned a child many decades earlier.

Other dangerous mythologies are evident too. As Weber (1981) argued, some stories 'attribute cruelty to step-relatives thus casting the responsibility for improper behavior onto a stranger to the family. In theory, blood relationship should prohibit cruelty.'¹³² Such a presumption can be a profoundly unsafe one, as much child protection case law makes plain. And yet, folklore can still be viewed as a valuable repository for 'distilled wisdom' and as a highly effective means of 'maintaining conformity' especially amongst those who lack literacy or social power.¹³³ Many fairy tales are relevant to critical adoption studies, regardless of their form: numerous 'fables, legends, and animal tales ...folk anecdotes, trickster stories, tall tales, and religious narratives...[reveal] a great deal of magical or miraculous transformation and moral counterworlds.'¹³⁴ The unwelcome imposter can spark deep unease, through their abhuman capacity to mimic genuine, 'legal' relatives. Conversely, their ability to sometimes engender compassion—despite perhaps hoodwinking family members—is also important as evidenced by the many folkloric stories that touch upon these issues and which have retained our interest in them for centuries, across numerous iterations.

2.5 Conclusion

...the unusual or even the impossible is an important ingredient of myths and folktales.

—Bascom, William R 'Four Functions of Folklore' *The Journal of American Folklore* (1954) 67, No. 266, pp. 333–349, p. 344

Israelowich (2017) has argued that the various

¹³² Weber *op. cit.*, p. 107.

¹³³ Bascom *op. cit.*, p. 345.

¹³⁴ Tatar *op. cit.*, p. 63.

...motives behind child exposure include[d] a noticeable physical abnormality... legitimacy, poverty, and finally, *religious, ominous, and spiritual* reasons (emphasis added).¹³⁵

These latter three highly subjective, fear-led—and somewhat nebulous—reasons for denying or rejecting one's descendants do offer insights into why secondary rejections might occur to stymie reunions. *Religious* beliefs are hard to argue with, as are long-held superstitions and biases, regardless of era. *Ominous* and *spiritual* reasons for relinquishment may be even more difficult to identify, interpret, and analyse, but they are still a staple of many a folkloric tale involving a 'reunion gone wrong' narrative. It makes sense that the unexpected stranger is not to be immediately trusted: the resilient foundling who returns to their origins many years later is likely to be even more unpredictable, and probably armed with many tough questions, if not a sense of having been wronged. Norms and customs that tend to arise in the absence of legislation can take the place of absent laws, influencing behaviours and biases, especially in relation to the concept of illegitimacy. Rituals too, are significant, whether they are grounded in custom, religion, spirituality, or arcane superstitions, to protect against usurpers or imposters. In some respects, the darkness of much of the lore on changelings perhaps best represents the potential dangers of being perceived as an unwelcome, inauthentic, possibly malevolent other. The concept of rights as we would currently recognise and interpret them—to life, identity, security, familial ties, and so on—is largely alien to such tales. Certain aspects of these narratives do however speak loudly to issues of inequality, social injustice, and the need for redress. Wrongs may—eventually—be righted, in the sense that important truths and original identities could, in time, be revealed, to see kinfolk reunited, and inheritances or birthrights restored to the dispossessed. Abusive parents or stepparents may also face punitive sanctions and apposite comeuppances for their ill-treatment of the rejected, othered child. Whether any of this amounts to a reversal of orphanisation or othering, is questionable, however. Even where just and equitable resolutions occur, this will likely be down to the influence or intervention of some higher power (a kindly monarch, helpful forest creatures), enchanted entity, or magical item (a talking, decapitated horse's head, or a wise, all-seeing mirror). There may also be a need for some mysterious, healing ritual, especially where successful searches and familial contact are the desired outcomes. Arguably, not entirely dissimilar steps must frequently be taken by adoptees in closed records jurisdictions to work around the various legal and cultural barriers that prevent origin access. Judges or

¹³⁵ Israelowich *op. cit.*, p. 218.

social workers may, for example, be prevailed upon to exercise a degree of discretion or interpret the law sympathetically to permit kin contact or unseal files. Failing that, the less seen, near-magical work of adoption 'search angels,' reunion registries, online investigators, and DNA-testing companies may be called upon, to achieve what the law cannot or will not.

In terms of offering some level of guidance for modern-day decision-makers (on issues involving reunion, identity rights, or truth recovery), certain folk and fairy stories seem especially significant. There are numerous sharp warnings: reunions may be framed as inadvisable or impossible and they might provoke primal fears that are simultaneously nightmarish and pitiable, both for those who search and for those who might not ever wish to be found or contacted. The sanctity of the (legitimate) family is symbolised repeatedly by the sacred spaces of home and hearth, or reflected in the use of mnemonic devices that offer connection and connectedness to histories, origins, and ancestries. Othering norms and customs are common, not least infant exposure, presented often as a complex thing, but not always as an inevitable act of cruelty. It might result from poverty, overpopulation, or a profound lack of familial or societal support, or indeed be the only response possible against a backdrop of shame and ostracism. As Perrie (1989) observed, certain tales are not 'simply a mirror, [but] rather, a depiction of a symbolic universe.'¹³⁶ It is these that will likely resonate with those who have been deprived of origin and driven to search. There is much to applaud within many of the folkloric tales discussed in this chapter: redressive, justice-led outcomes are often seen, with the wicked punished, important truths recovered, and the innocent foundling almost invariably restored to their rightful place, familial or societal. As with most fairy tales, there are often limitations to the happiness of such endings, however. Resolutions involving reunion or redress are likely to be framed as rewards for good behaviour: gratitude matters as does resilience, and stoicism. Happy endings tend also to present as quite extraordinary outcomes, magical in nature, rather than as basic, rights-led entitlements, grounded in human dignity and our need for ancestry. That said, the often very heavily resource-dependent nature of certain human rights (respect for one's home, family, or private life, for example) can mean that such things are often perhaps better understood as mere privileges rather than as fundamental entitlements. Where such rights are also subject to the vagaries of judicial interpretation and wide discretion—or to shortfalls in domestic budgets for social support—they can easily become highly qualified, fragile things, possibly quite fictive in nature.

¹³⁶ Perrie *op. cit.*, p. 123.

The chapters that follow revisit and expand upon some of the key themes explored in this one: otherness, illegitimacy, relinquishment, stigma. They look to later eras (the Victorian, Edwardian, mid-twentieth century, and future-set dystopian novels) where orphanisation still occurs and the othered search for answers or origins. Law may either be very sparse, or quite heavy-handed, in terms of dealing with such complex familial issues as illegitimacy, infertility, and child protection. Clashes of rights (parental privacy versus adoptee rights to identity, family autonomy versus the child's right to have their best interests protected, for example) are also frequently explored within these works.

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3

Monsters, Heroes, Waifs, and a ‘Witch’

3.1 Introduction

...like the novel, the law is most interested in the wealthy orphan who is situated within a family structure and must negotiate what is often an excess of attention and desire.

—Cheryl Nixon, ‘*The Orphan in Eighteenth Century Law and Literature: Estate, Blood, and Body*’ (2011) Routledge: London, p. 261

As Nixon has argued, orphans were very often ‘intimately...connected to the law.’ The eighteenth century saw many works of non-fiction define the orphan as ‘a problematic collective,’ even while certain narratives gradually sought to ‘replot’ them within the public consciousness as fairly well off, or at least supported financially by some sort of wardship arrangement.¹ Traditional stigmas—and fears—attaching to aspects of orphanhood continued into later centuries however, alongside the traditional custom of othering the stranger. This tended to affect those who were deemed ‘surplus’ to a community’s needs, either by virtue of their illegitimacy or through some other worrying feature that might serve to set them apart from the rest of ‘respectable’ society, such as poverty. This chapter looks at how some of the tropes and superstitions of earlier eras lingered on to ‘haunt’ certain works of Romantic and Victorian fiction, and eventually influence early law-making on orphans and foundlings. Put bluntly, the waifs, demons, and changelings

¹ Nixon, Cheryl, ‘*The Orphan in Eighteenth-Century Law and Literature: Estate, Blood and Body*’ (2016) Routledge, London, p. 39.

of folkloric and fairy tales still tended to appear in this era as monstrous or supernatural creations, with the occasional power to overcome death (or at least work around it to some extent) in pursuit of some form of familial reunion or a repatriation with their heritage. They struggled with gaining societal acceptance (*Frankenstein*, *Wuthering Heights*, *Jane Eyre*), given that orphanhood and orphanisation are often problematic. Familial rejections and/or abusive childhoods, at the hands of their original or adoptive family, are also evident. The notion of the ‘surplus child’—and the issue of how to deal with them—was, as ever, often central to a wider understanding of otherness and how it continued to arise (*Great Expectations*, *Oliver Twist*, *David Copperfield*).² Emergent themes in literary fiction included the need for gratitude and resilience on the part of the orphan or foundling: these informed nascent law and policy frameworks on poverty alleviation and child protection. Perennial biases are still evident in this long ‘workhouse to golden age’ era, despite—perhaps because of—the persistence of certain heroic foundling imageries, and the growing popularity of tales about the overly plucky, industrious, and ever-grateful orphan, who was willing and apparently happy to be transplanted perhaps permanently across familial, social, and national borders.

This chapter and the next serve as a sort of bridge between the folkloric stories of Chapter 2 and the dystopian, testimony-rich tales of Chapter 5. The former is often lacking in formal legislation but is rich with dark customs and superstitious beliefs that both shape and regulate norms of behaviour, and the concepts of family and filial obligation. The latter has an abundance of draconian rules and regulations aimed at managing or eliminating unwelcome or surplus others from public view (and, often, from written records) through the use of various social or cultural institutions.³ The surplus child, if sufficiently perfect, began to be perceived as a valuable commodity, near the end of the Victorian era, initially offering cheap or free indentured labour, but then eventually being seen as an ideal means of ‘curing’ infertility. Law’s role,

² On infanticide in this era see further Sauer R ‘Infanticide and Abortion in Nineteenth-Century Britain’ *Population Studies* (1978) 32 (1), pp. 81–93, p. 91 who argues that apparently ‘...stories of infanticide had largely disappeared from the popular and professional press by 1900, and concern for infanticide arising from institutional abuses declined markedly. The licensing and, with an 1897 amendment to the Infant Life Preservation Act, the periodic inspection of ‘baby farms’ considerably relieved anxieties relating to these institutions, and there was less concern for the effects of burial insurance on child welfare....’

³ On the concept of the institution see further Newman, Charlotte, ‘To Punish or Protect: The New Poor Law and the English Workhouse’ *International Journal of Historical Archaeology* (2014) 18 (1), pp. 122–145 who examines ‘the range of complexes constructed to control those individuals’ perceived to be problematic by society, such as the immoral, criminal and vulnerable’ and argues that certain institutions ‘ultimately evolved to serve the specific needs of the Guardians, staff, and inmates’ (p. 122).

ostensibly, was initially to protect the vulnerable 'orphan' from unscrupulous, dangerously unregulated private adoptions and hazardous industrial practices.⁴ The substitute family, it was assumed, would offer adequate shelter and safe haven. Legislation on closed birth records looked to protecting all involved, shielding them from adoption-related taboos and various shameful things: unwed motherhood, illegitimacy, childlessness. The origins of some of the more troubling aspects of 'dystopian-adoptee' literature (Chapter 5) can also be seen here, such as the myths surrounding the 'consensual' nature of maternal relinquishments, the 'blank slate' (*tabula rasa*) theories on early infancy and attachment,⁵ the erasure or criminalisation of mothers and motherhood via law or policy, and the reluctance of ruling elites to apologise for the harms and rights violations flowing from orphanisation: identity losses, and the commodification of adoptees. Likewise, the rise in the use of certain institutions—not least workhouses and orphanages—is also evident. As Newman (2014) notes,

...the material form of the workhouse had to negotiate complex ideologies of middle-class Victorian morality. It had to deter the idle, punish the immoral, reform the redeemable, and treat the physically unable.⁶

It is unsurprising then that such a building—offering housing but destroying home life, by separating family members—features so frequently in works of dystopian fiction, Victorian horror, and orphan rescue narratives. Secrecy and state-church impunity are perhaps the defining features of this era however, which was shaped by traditional beliefs and practices on othering via illegitimacy, shame, and stigma. The sociolegal justifications for sealed and/or falsified birth and adoption records can still be seen in some recent dialogues involving law reform.⁷ Intergenerational impacts and inequalities continue,

⁴ See further Franks, Dorothy, 'The Rumor on Adopting Children for Their Organs: A Compelling Reason to Address a Thriving Organ Black Market and the Prevalence of Children Being Trafficked into Adoption' *Journal of Health & Biomedical Law* (2018) 14, pp. 169–232, who grounds the early origins of such rumours in folkloric tales (e.g. Mayan legends, and antisemitism) but also argues that '...the adoption organ rumor that has circulated the globe has truth to it. The genuine and concerning instances of selling organs on the black market and selling children into adoption make the rumor plausible' (p. 232).

⁵ See further Bowlby John, *The Making and Breaking of Affectional Bonds* (1979) Tavistock: London.

⁶ Newman, *op cit.*, p. 124.

⁷ See, e.g., Shanahan, Matt T. D., *Dáil Éireann Debate* (on the Birth Information and Tracing Bill, Thursday, 20 January 2022, Vol. 1016, No. 5 (Second Stage, Resumed) <https://www.oireachtas.ie/en/debates/debate/dail/2022-01-20/31/>; McQuinn, C., 'Thousands of Illegally Adopted People to Have Inheritance Rights from Two Sets of Parents' *Irish Times* (2022) at <https://www.irishtimes.com/news/politics/thousands-of-illegally-adopted-people-to-have-inheritance-rights-from-two-sets-of-parents-1.4775954>; Murray, J., 'Does the Institutional Burials Act respect the Dead or Bury Our Shame?' (2022) *Irish Legal News*.

decades after some jurisdictions have begun to open certain files and permit adoptees access to their birth records, and even in the wake of formal apologies by churches and states.⁸ Discourses on adoptee rights violations—and the related issues of apologies, truth recovery, and redress—are fairly recent developments, and still ongoing in some places,⁹ but the seeds for all or most of these things were planted during this era.

The works of literature chosen for inclusion in this chapter reflect the growing unease over society's treatment of orphans and foundlings, especially those who were deemed illegitimate. Differing images of the orphanised are presented. Shelley's monstrous, abandoned creation (*Frankenstein* [1818]) epitomises an abject otherness, taking us through repeated rejections by his parent-creator and society. His story sets out the irreducible nature of the many harms associated with being rendered kinless and parentless (not to mention the dangers of attempting contact or reunion). Emily Brontë's Heathcliff (*Wuthering Heights* [1847]), though also suited to being considered under the Romantic or Victorian orphan/adoptee section alongside *Jane Eyre* (1847), is included here with his fellow monster for various reasons, outlined below. The more typically Romantic and Victorian orphans—*Jane Eyre*, and numerous Dickens characters—¹⁰ trace a pathway through the heroic, stoic era, which saw the sometimes genuinely orphaned (or at least irretrievably abandoned) child prosper or fail accordingly.¹¹ Law's focus throughout all of this—like that of many a Victorian novelist—was on the need to protect the interests of legitimate heirs, rather than on the prevention of harmful social exclusion of the vulnerable.¹² As Frost (2009) has noted, the 'Victorian stigmatization of poverty'¹³ led to 'lifelong difficulties' for many institutionalised children, who often had 'a sense of not having a right to exist.'¹⁴ The concept of fundamental, individualised human rights gradually emerged across this long era: the rejected monster of Dr Frankenstein and the

⁸ Carroll, R., 'Irish Church and State Apologise for Callous Mother and Baby Homes' The Guardian (2021) available <https://www.theguardian.com/world/2021/jan/13/irish-church-and-state-apologise-for-callous-mother-and-baby-home-institutions>.

⁹ See, e.g., Sherwood, H., 'Victims of Forced Adoption Step Up Pressure for UK Government Apology' The Guardian (May 2023), <https://www.theguardian.com/society/2023/may/09/victims-of-forced-adoption-step-up-pressure-for-uk-government-apology>.

¹⁰ For example, Pip, in Dickens' *Great Expectations* (1861) or the eponymous *Oliver Twist* (1838).

¹¹ Reynolds, Susan Elizabeth, 'Oliver All Over Again: Dickens Narratives of Orphanhood in the Victorian Novel' (2012) Tuscaloosa University Press: Alabama. Texts such as Wilkie Collins's *No Name* (1862) also spotlight the inconsistencies in English law over illegitimacy and the indignities associated with namelessness.

¹² Frost, G. S. 'Illegitimacy in English Law and Society 1860–1930' (2016) Manchester University Press: Manchester.

¹³ Frost Ginger, S., 'Victorian Childhoods' (2009) Praeger: Westport, Loc 170 Kindle ed.

¹⁴ Ibid., Loc 173.

abused, abandoned-in-childhood Heathcliff do at least spark some degree of reader sympathy. Their ill-treatment at the hands of their de facto 'relatives' and their inability to find answers or achieve some form of familial reunion raises many questions, particularly in terms of the law's role and remit in such scenarios. If lawmakers fail to adequately define the concepts of humanity, family, identity, and kinship, then it is difficult to see how jurists might later seek to find workable remedies for the 'everyday' injustices arising from an othered birth status or the loss of natal identity.

3.2 Monstrous Others: Familial Rejections, Failed Reunions, Absent Laws

No creature could have more tender parents than mine.

—*Frankenstein* (1818), p. 20

Emily Brontë's Heathcliff has much in common with Shelley's monstrous creation in *Frankenstein*. Both are clearly deprived of origin from an early age, with no way of ever discovering their ancestries or backgrounds. They are orphanised via rejection or abandonment either at 'birth' (*Frankenstein*) or in early childhood, reinforced via subsequent ill-treatment by their fostering/adoptive family (*Wuthering Heights*). It seems likely that Heathcliff is illegitimate, given the circumstances of his odd 'rescue' from Liverpool by Mr Earnshaw.¹⁵ He eventually goes on to display many of the normative features of bastardy, as set out in folkloric tales and superstitions: as per the usual 'demon seed' warnings, he becomes a vengeful and dangerous usurper, upsetting the traditional hierarchies and ruining the family lives of the lawful, legitimate heirs to the Earnshaw and Linton fortunes. His monstrous nature seems not to have been inherent but caused by his ill-treatment and exclusion from family life, in childhood. He could easily plead, as Frankenstein's creature does, '...I was benevolent and good; misery made me a fiend.'¹⁶ The creature falls more into the category of vengeful, exposed spirit, knowing the identity of the parent-creator who abandoned and then repeatedly rejected him, leaving him to the mercy of the elements and of a hostile, fearful society. His situation could be interpreted as an immediate rejection by a birth or

¹⁵ See further Goetz, William R., 'Genealogy and Incest in *Wuthering Heights*' *Studies in the Novel* (1982) 14 (4), pp. 359–376 who suggests the possibility of genetic relatedness between the Earnshaws and the founding Heathcliff.

¹⁶ *Frankenstein*, p. 65.

commissioning parent, but is also akin to a rehoming by an adoptive parent who has had a change of heart when he sees what parenting this peculiar other might entail. The infantility of the creature is both obvious and pathetic;

I beheld the wretch—the miserable monster whom I had created. he held up the curtain of the bed; and his eyes, if eyes they may be called, were fixed on me. His jaws opened, and he muttered some inarticulate sounds, while a grin wrinkled his cheeks...one hand was stretched out, seemingly to detain me, but I escaped....¹⁷

Long prior to this ‘birth,’ Shelley is careful to emphasise his otherness. Her sympathies seem to lie with the fleeing ‘parent’ who does not wish to be found. Even before we hear from Dr Frankenstein himself, we learn that he is regarded with filial fondness by the narrator, Walton:

...for my own part I begin to love him as a brother and his constant and deep grief fills me with sympathy and compassion. He must have been a noble creature in his better days...¹⁸

Such privileges as familial affection, trust, and sympathy are reserved for this legitimate citizen in sharp contrast to the treatment afforded to the manufactured creature who can never form any such bond, sibling, parental, or marital, or gain a similar level of societal respect. And yet, Victor Frankenstein in a sense usurps certain characteristics of the monster, stealing from him not only the title of ‘creature,’ but also much of the sympathy that might have been due to him by virtue of his having been abandoned from the moment he opened his eyes and tried to smile at his ‘parent.’ He too might have been ‘a noble creature’ had he not been brutally deserted at birth and rejected repeatedly thereafter by his ‘father’ and various substitute carers. Much more concern is reserved for the negligent creator who has opted to flee. It is reiterated several times that Frankenstein is the ‘most noble of *human* creatures’¹⁹ (emphasis added) presumably because his humanity must be stressed to differentiate him from the fearful other, *less than* abhuman being that he has constructed and then abandoned. Shelley still feels the need to anoint him with a halo, rewarding his ability to preserve his privacy: ‘when he has retired into himself, he will be like a celestial spirit, that has a halo

¹⁷ Ibid., p. 34. The scene inverts the norms surrounding exposure, in the sense that the ‘parent’ flees the homeplace and the creature must wander into the wilderness to gain knowledge, language skills, and a sense of identity.

¹⁸ Ibid., p. 16.

¹⁹ Ibid., p. 17.

around him, within whose circle no grief or folly ventures.²⁰ He himself represents the sacred but also those sanctified spaces occupied by home, family, and privacy. These cannot or should not be breached by unwelcome others, regardless of era.

Knowledge of one's ancestry is also significant: Frankenstein himself opens with a quick nod to his ancestors: 'I am by birth a Genevese and my family is one of the most distinguished of that Republic.'²¹ There are other clues as to how foundlings and orphans are regarded and treated. To be afforded the dignity of being seen as a 'genuine' orphan, there needs to be visibly dutiful behaviour. One exemplary orphaned daughter, Caroline, is rewarded by a good marriage.²² Another mother-rejected fosterling, Frankenstein's beautiful cousin Justine, becomes a family servant, and 'by her eyes' (rather than any verbal praise) apparently makes it very plain to everyone that she is a 'most grateful little creature.'²³ The message seems to be that if you cannot be a fully legitimate, visibly human, relative, you should at least aim to display deep appreciation, if you are hoping for some measure of eventual acceptance.²⁴ This doesn't save her of course, when she is later framed for the murder of her cousin/foster sibling: arguably, had she been a fully-fledged family member, Frankenstein might perhaps have spoken out to defend her. It is significant that his childhood was rich with relatives, books, and a close friend (who writes fairy tales), but still 'remarkably secluded and domestic'²⁵ and therefore safe from the influence of outsiders. Again, he stresses that 'the company of strangers' is unwelcome.²⁶ All of this is an inversion of the creature's miserable early life experience: he self-exiles to the forest, in keeping with his abandonment, to suffer the classic cold and hunger of 'fairy tale' exposure. He discovers that fires can bring warmth, and mark out a home place, but also that they can harm and should be approached with caution.²⁷ The same can be said of the quasi-foster family that he attempts to join, to his mind, 'protectors' who are unaware of his presence despite his blatant efforts to help out with the chores. He learns much about humanity and the ideals

²⁰ Ibid., p. 17.

²¹ Ibid., p. 19.

²² Ibid., p. 20.

²³ Ibid., p. 39. Subsequent reunion with her original mother does not go well, in keeping with the norms and warnings of such tales.

²⁴ As the creature notes, having 'high and unsullied descent united with riches' (p. 78) is the best way of gaining societal esteem.

²⁵ Ibid., p. 26.

²⁶ Ibid., p. 26.

²⁷ Ibid., p. 67.

of family life by having watched them surreptitiously: 'all the various relationships which bind one human being to another in mutual bonds.'²⁸ He gets a tiny bit of information about his origins only by accident, on discovering his creator's notes in the pocket of a jacket that he—of course—had to steal for warmth; like a lot of the non-identifying information given to adoptees in sealed records jurisdictions, it is just enough to reinforce his feelings of self-loathing and highlight 'what a wretched outcast' he now is.²⁹

Like Heathcliff, naming and names are an issue: the creature lacks one completely, while Brontë's anti-hero must make do with just the one, significantly recycled from the 'son who died in childhood,'³⁰ to serve as both surname and first name. A similar theme to this is seen in the dystopian novels of Chapter 5, where characters are readily renamed or given numbers, generally to denote who owns them, or to indicate the sort of belongingness that is reminiscent of enslavement. The rampaging of Frankenstein's monster is akin to that of Heathcliff, who takes a slightly less murderous, more gradual approach, but still achieves the usurpation of the rightful heirs to the Earnshaw and Linton estates, bringing down two families, across three generations (with his behaviour generally contributing to the deaths of several of them).³¹ The warnings of folklore were entirely correct in this case.

Neither of these two abandoned characters gains lasting ties of kinship (unless we count Cathy's ghost which hovers about outdoors in a mix of malevolence and pitiful exclusion) nor do they achieve social acceptance, although Heathcliff's acquired wealth and dark charisma do briefly win him some brownie points, albeit temporarily. The creature's fleeting 'childhood' connection with a de facto foster family had the potential to become something substantial, until they lay eyes on him and cannot cope with his extreme and too-obvious otherness.³² That they immediately quit their home—and that the creature then feels compelled to burn it down—confirms that this 'quasi-placement' has broken down beyond repair. He is too much a changeling, too monstrous, despite having tried his best to self-educate and help out with heavily symbolic household tasks—in particular, the gathering of firewood—to contribute to the heat of the hearth (which he was

²⁸ Ibid., p. 78.

²⁹ Ibid., p. 85. He later calls himself 'the miserable and the abandoned...an abortion, to be spurned at, and kicked, and trampled on' (p. 148).

³⁰ *Wuthering Heights*, p. 36.

³¹ His actions are not illegal (arranging equitable mortgages and marrying—or facilitating—loveless marriages—to acquire property) but they are profoundly unethical.

³² Had he perhaps been created as a child or infant monster, rather than a physically huge, fully formed 'adult'—albeit with the limited abilities and personality of an infant—his experiences might, arguably, have been less fraught.

only permitted to sit beside once, until the family saw him and ran away screaming).

Such episodes aside, the monstrous nature of the pursuits of these two monstrous others does little to reassure the reader that an unexpected, illegitimate orphan or relative is anything other than a frightening spectre, to be avoided at all costs. Their actions, more so even than any repulsive physical characteristics or beliefs, have marked them out as irredeemably other, and incapable of becoming fully legitimate(d) members of society.³³ Heathcliff's case is unfortunate, because the self-made, suddenly wealthy orphan trope, is usually a heart-warming one (discussed in Chapter 4). His act of usurpation seals his fate however: he has literally 'won' (via Hindley's gambling debts and the law on mortgages) an old family estate away from the rightful, legitimate heirs. As Zunshine (2005) observed, the predominant view of the bastard in the eighteenth century was that they were prone to upsetting the 'natural' order of things—not least the transmission of lawful inheritances to legitimate heirs—and to destroying the sacred peace of those inner, familial circles that might have excluded them.³⁴ Frankenstein's creature evidences just how quickly initial contacts can go badly wrong. Neither of these two characters began life as villainous demons: both showed signs of simply wanting to be included within a family and cared for by a parent figure. Their otherness is inevitable given their birth status: Heathcliff is—we can assume—illegitimate, a foundling, possibly orphaned, then 'adopted' informally (as was the norm, pre-legislative frameworks) when taken in as a ward by the kindly Mr Earnshaw.³⁵ The creature is rejected at birth, and thus orphanised, by Frankenstein, who, as his creator, can also represent the abandoning parent. Alternatively, he could be instead framed as adoptive or commissioning father, if we take the creature's complex biogenetic makeup to be his 'origin.' Either way, the rejection is an act of cruelty, akin to the exposure of the unwanted, deemed-surplus child.

Family life is denied to them (no happy marriages, no true descendants³⁶) and therefore any objects that denote ties of relatedness or happy childhood

³³ See further Diver, A., "'Monstrous Othering': The Gothic Nature of Origin-Tracing in Law and Literature' *Adoption and Culture* (2021) 9 (2), pp. 247–275 where I argue that law and policy can easily conspire to compound otherness to the extent that it becomes monstrous.

³⁴ Zunshine, Lisa, 'Bastard Daughters and Foundling Heroines: Rewriting Illegitimacy for the Eighteenth-Century Stage' *Modern Philology* (May 2005) 102 (4), pp. 501–533, pp. 505, 503.

³⁵ Resemblances are hinted at throughout, for example, when the cousins Hareton and Cathy '... lifted their eyes together... their eyes are precisely similar, and they are those of Catherine Earnshaw' (*Wuthering Heights*, p. 380).

³⁶ Heathcliff does father a sickly and unpleasant son, Linton, but he has no interest in him other than using him as a pawn to wreak more havoc, via marriage.

memories must be destroyed by them.³⁷ The creature sets fire to the cottage where he had spent his 'childhood' and learned to talk and read (and saw how family life can be a sheltering, nurturing thing).³⁸ Heathcliff destroys everything and everyone in his path, notably at one point hanging the pet dog of his wife, Isabella,³⁹ and interfering with the contents of a locket worn by Catherine in death.⁴⁰ As in most dystopian texts, literacy and access to books matter; they play an important role in revealing hidden truths, but also in helping the orphaned or excluded acquire the knowledge and skills needed to join 'respectable' society. The creature taught himself how to speak and read by watching the De Lacey family through a small crack in their cottage wall: he is lucky to find some books that allow him to educate himself a little further. Heathcliff perpetuates the sort of abuse that marked and marred his own childhood, ensuring that his nephew Hareton (an innocent character and loyal to Heathcliff, as seen when he sorely grieves his death) grows up debased and illiterate. Heathcliff mimics the cruelties of Hareton's late father Hindley, who exiled Heathcliff from everything familial and respectable once old Mr Earnshaw died.⁴¹ In keeping with folkloric warnings, Heathcliff 'the cuckoo'⁴² usurps and others Hareton, a legitimate descendant and genuine orphan (who, in keeping with the rescue tropes, is both kindhearted and usually quite biddable). Crucially, he does not actively seek revenge or the restoration of his rightful inheritance, and as such fits the profile of stoic, grateful orphan who makes no challenges to the existing laws or unjust customs on inheritance and inequality. Order is restored not by any supernatural means or vengeful machination, but simply by the laws of inheritance and marriage, which reward and evidence Hareton and Cathy's patience (not to mention the death/suicide of the increasingly monstrous Heathcliff, which is also in keeping with the Gothic tone of this and other texts on othered foundlings).

³⁷ Ellis, Kate, 'Monsters in the Garden: Mary Shelley and the Bourgeois Family' in Levin, G. L. and Knoepfelmacher, U. C. (eds) *The Endurance of Frankenstein: Essays on Mary Shelley's Novel* University of California Press: US, pp. 123–142, p. 123, on how the creature reacts to being 'denied the domestic affections of a child, sibling, husband, and parent' as he peers through a small crack at the De Lacey family (p. 123).

³⁸ *Frankenstein*, p. 90.

³⁹ *Wuthering Heights*, p. 146.

⁴⁰ *Ibid.*, p. 161.

⁴¹ As Levy observed, Heathcliff was 'a strange child whose birth is to remain a mystery, who may be gypsy or prince, animal or devil.' Levy, Anita, *Other Women: The Writing of Class, Race, and Gender, 1832–1898* (1991) Princeton UP: US, p. 78.

⁴² *Wuthering Heights*, p. 34, as Nellie describes Heathcliff's history: 'I know all about it: except where he was born, and who were his parents....'

In the case of *Frankenstein*, the orphanised monster and his negligent parent both must be destroyed however, after an icy, posthumous reunion of sorts, as far removed from civilised society as is possible. This ending offers the usual warnings to those who seek out—or run from—the things that should be warmly familial but might instead be deeply disturbing.⁴³ The message here seems to be—as per much folkloric wisdom—that some searches for origins or family can be dangerous to all concerned. Reunions can be highly unpredictable; the orphanised other can be vengeful or murderous, not quite human, and prone to usurpation. People and relationships can easily be harmed or lost along the way, as difficult truths emerge: the monstrous aspects of familial repatriation may well provoke sharp rejections and intergenerational harms.⁴⁴ Those deprived of natal origin, via sealed or falsified records, parental vetoes on information release, or the blunt brick wall of secondary rejection, can likely relate. The law seems, even yet, to deem some adoptees monstrous, in the sense that we cannot apparently always be trusted to respect the privacy rights of others or refrain from unwanted searches or attempts at contact.⁴⁵

3.3 Faeries and Witches again: *Jane Eyre* as Othered—But Magical—Heir

*She began by felling my horse.*⁴⁶

—Rochester, *Jane Eyre*, p. 78

Where the foundling or orphan lack supernatural gifts, they might well have to rely upon dogged determination, law breaking, criminality, brute force, or luck, to find answers, seek justice, trace relatives, or make contact. Certain methods do not end well, regardless of era or genre. The privacy rights of parents have long been protected by law and policy through closed birth and adoption records, donor anonymity, maternal vetoes on information

⁴³ *Frankenstein*, p. 146.

⁴⁴ Frankenstein's creature declares that he will 'exult in the agony of the torturing flames' of his 'funeral pile,' before disappearing into icy 'waves...lost in darkness and distance' (p. 149). Heathcliff appears to starve or chill himself to madness and death 'washed with rain' (p. 168).

⁴⁵ See, e.g., Ireland's recent legislative reforms on accessing birth records and applying for compensation: <https://data.oireachtas.ie/ie/oireachtas/act/2022/14/eng/enacted/a1422.pdf>; Adoptee Voices, 'The Aitbeantas Report: EPRS on Adoptee Rights' <https://cdn.adopteevoices.ie/references/EPRS+on+Adoptee+Rights.pdf>.

⁴⁶ *Jane Eyre*, p. 78.

release and on contact, and the insertion of qualifying conditions into otherwise ‘progressive’ pieces of legislation aimed at promoting adoptee rights (as Chapter 5 outlines).⁴⁷ The non-monstrous Victorian orphans and foundlings of literary fiction tend to tread more softly than their earlier, angrier counterparts, perhaps being more mindful of their increasingly precarious place in society. Gender too was often a factor,⁴⁸ making female orphans more likely to be seen as witches than as monstrous or demonic creatures. The display of some magical or supernatural heroic power—or extreme luckiness—was also a common trope.⁴⁹ Their tendency to be visibly virtuous, with noble characteristics, lingered on, influencing subsequent representations of the ‘good’ adoptee, in terms of gratitude, pluckiness, and fortitude.

The stoic, possibly magically gifted, hero(ine) trope is in many ways exemplified by the character of *Jane Eyre*. As Auerbach (1975) argued, she differs from the picaresque foundlings of earlier eras and also from those who were soon verging on extinction ‘because, unlike the eighteenth-century orphan, she is not an artifact (“an automaton”), but a “soul”: she is super-naturally sanctioned.’⁵⁰ Her peculiar brand of gentle otherness was not grounded in anger at her birth status. Rather, it arose from the inherited poverty of her married parents, and their defiance of social mores, which saw them step outside the protections of society and family, to catch fatal illness from the impoverished others that they tried to help. Jane is repeatedly told by the relatives tasked with caring for her that she is very much ‘less than’ and not worthy of inclusion in anything that calls to mind family life.⁵¹ Having had a mother who was married, Jane is at least unburdened by the stain of illegitimacy that afflicts many others in her position.⁵² She is orphaned, but then informally adopted—or taken in as a ward—by reluctant kinfolk who

⁴⁷ See further McGettrick, Clare, ‘Our Rights as Adopted People Will Not Be Enshrined in Law, They’ll Be in Grave Danger’ (2022) <https://www.thejournal.ie/author/claire-mcgettrick/7810/>.

⁴⁸ Schmidgen, Wolfram, ‘Illegitimacy and Social Observation: The Bastard in the Eighteenth-Century Novel’ *ELH* (2002) 69 (1), pp. 133–66, p. 133.

⁴⁹ Examples abound: Disney’s orphans/adoptees tend to have fairy godmothers or helpful friends who guide and assist them through every trial; *Harry Potter* is an obvious example of the heroic, lucky, and supernaturally gifted orphan. Dystopian novels (discussed in Chapter 5) offer further examples, such as Jonas in *The Giver*, who can ‘see beyond’ and in colour.

⁵⁰ Auerbach Nina ‘Incarnations of the Orphan’ *ELH* (Autumn, 1975) 42 (3), pp. 395–419, p. 405. See further Frost, G., ‘Victorian Childhoods’ (2009) Praeger: London, Ch. 6 on the ‘lifelong stigmas and endless sermonizing about their need to be grateful for the charity they had received’ (Loc. 1680, Kindle ed.).

⁵¹ A perennial trope repeated in numerous works of popular culture, e.g. George R. R. Martin’s *Song of Ice and Fire* saga, which offers various takes on the notion of illegitimacy: ‘What might I do, bastard as I am?’ *A Clash of Kings*, p. 96.

⁵² Adele, Rochester’s ward, is not so lucky and seems to have inherited a propensity for giddiness, which seems to stop Jane from bonding with her.

mistreat her from infancy and eventually reject her. They (re)orphanise and banish her by displacing her to Lowood, a so-called boarding school that more closely resembles a workhouse or orphanage, exposing her to cold and hunger, in much the same way as exposed infants left out in the forest might be. The abuses that she endured in the private setting of Gateshead at the hands of her substitute family are replaced by a range of public humiliations and punishments at Lowood, underscoring her banishment from the family circle. For her, the sacred sphere of family is much more dangerous than the 'wilderness' that surrounds it. As with Frankenstein's creature, the most wounding rejection occurs at the fireside. Jane remains generally grateful, and politely long-suffering, though she is still capable of resistance—by words and action—if provoked beyond endurance by some injustice.

Significantly, she does not actively seek out any other genetic relatives, only belatedly discovering some kindly ones, completely by accident (or magic, perhaps) after a difficult storm-swept, journey that leaves her ill and degraded. The unexpected reunion restores her to her inheritance. From childhood her interest in folkloric things—disturbing songs, superstitions, and stories—serves her well, allowing her ultimately to hear incorporeal voices that shoo her towards her own marriage and motherhood at the very end of the book. She is repeatedly accused of being only partially human. Rochester demands to know her origins:

No wonder you have rather the look of another world. I marvelled where you had got that sort of face. When you came on me in Hay Lane last night, I thought unaccountably of fairy tales, and had half a mind to demand whether you had bewitched my horse...who are your parents?⁵³

This aspect of her otherness is what allows her to defy social conventions and expectations, survive trauma, and flee from injustices to craft a family unit of her own. Significantly, she must set up home in the woods, confirming her otherness but also utilising it to critique the illusory 'respectability' of society that permits—indeed encourages—the abuse and exclusion of vulnerable children. As I have argued previously, elsewhere,⁵⁴ Jane has aspects of the witch about her, seemingly controlling the weather (via ice, lightning, storms) and having a strange kinship with the moon. She doesn't always grasp that she can influence humans, or manifest unlikely, beneficial outcomes. Much

⁵³ *Jane Eyre*, p. 77.

⁵⁴ On *Jane Eyre* as a witch, see further Diver, A., 'Jane Eyre and Social Justice: How to Survive a (Victorian) "Witch" Trial' *Preternature: Critical and Historical Studies on the Preternatural* (2020) 9 (2), pp. 209–242 which focuses upon her odd abilities to withstand harm, disappear conveniently, spell cast (often unconsciously), control the weather, summon familiars, and hear helpful voices.

like Frankenstein's creature—and indeed certain characters from dystopian novels—she has a complicated relationship with sacred yet dangerous hearth fires and their layers of familial symbolism: inclusion, warmth that might be forbidden or stolen, visible kinship. She appears to nearly summon the avenging spirit of her late uncle, in response to having been unjustly incarcerated in the red room.⁵⁵ Even the servants join in her othering and dehumanisation: 'one cannot care for such a little toad as that.'⁵⁶ Jane sees her own reflection at one point, wondering if she was 'one of the tiny phantoms, half fairy, half imp.'⁵⁷ Her vile Aunt Reed—a wicked stepmother figure—admits that she saw and treated Jane as a changeling, objectifying her as a 'sickly, whining, pining thing!' that would 'wail in its cradle all night long—not screaming heartily like any other child, but whimpering and moaning.'⁵⁸ She is frequently barred from the fireplace, which represents her exclusion from the family—this sacred yet potentially dangerous space cannot be opened up to interlopers, as unwritten customs dictate. Frankenstein's creature discovers this twice, firstly when he sticks his hand into an abandoned campfire, and later when he attempts to bond with his 'foster family.' Jane's fear of the fire comes from her never having been permitted to draw close to it. When she comes round from her red room ordeal, she finds herself giving 'evidence' to a kindly outsider (the apothecary) who, judge-like, has just enough power to help her situation. Her testimony is finally heard, believed, and acted upon, after having been disparaged by the 'institutionalised' Gateshead staff. She can escape, much like some of the orphans in other genres.⁵⁹ Her inadvertent sorcery is not limited to escapes, however. When she mothers her old, treasured doll (a 'faded graven image, shabby as a miniature scarecrow'⁶⁰), we see the maid Bessie, becoming strangely kind and affectionate towards Jane, very soon after.⁶¹ Likewise, when she needs saving from unpleasant things, it is strangers who rescue her, rather than any of her close relatives or substitute carers (Rivers' cousins notwithstanding).

⁵⁵ Bronte tells us afterwards that there is talk among the maids of weird noises such as knocks on the door, visions of ghostly figures with large dogs, and lights above his grave (p. 8).

⁵⁶ *Jane Eyre*, p. 12.

⁵⁷ Gilbert and Gubar (1979) suggest that her sense of doubleness begins for her here. Jane later recalls feeling as if she was near-possessed (p. 357); 'Something spoke out of me over which I had no control' (p. 14).

⁵⁸ *Jane Eyre*, p. 148.

⁵⁹ See, e.g., Jonas in Lowry's *The Giver* (1993).

⁶⁰ *Jane Eyre*, p. 15.

⁶¹ Bessie—the closest Jane has to anything resembling a substitute carer in Gateshead—could be seen as a significant mentor given her penchant for rural folklore and songs (p. 5). See further Martin, R. K., 'Jane Eyre and the World of Faery' *Mosaic: An Interdisciplinary Critical Journal* (1977) 10 (4), pp. 85–95, who frames Bessie as a 'displaced mother' (p. 89).

These kindly Rivers—polar opposites of the Reeds—are strangers at first but treat her as family from the outset, not knowing yet that they are related. Likewise, she never meets the uncle who leaves her the life-changing legacy. Brontë's underlying message may well be that family—meant to offer a sacred space where one is protected from the evils of an outside world—can very often be the site of worrying events or salvation. Such was Jane's systemic othering that her Aunt Reed—who had raised her from infancy—went out of her way to ensure that profound stigma would follow her to Lowood, by slandering her—and silencing her truths—in front of Brocklehurst, the school's hypocritical Supervisor.⁶²

Jane's orphaned status was at first blurred and then reinstated: taken in by genetic relatives who should have behaved as family, but they instead abused and banished her from family life, within the actual confines of the family home. Her institutionalisation and otherness therefore begin long before she enters Lowood. Its shame-led regime includes corporal punishment, degradingly plain hairstyles, and rough-hewn uniforms all of which presage both dystopian narratives and the real-life 'fallen women' reformatories of the nineteenth and twentieth centuries.⁶³ The aim of 'consistency' that Brocklehurst so prizes for his school is similar to the enforced *Sameness* that motivates the sedated, barely human population of Lowry's *The Giver* (1993) where parent figures and 'nurturers' (substitute carers) are equally prone to abusing vulnerable children and severing family ties. Many folktales featured similarly exposed, rejected children banished from family and society, having been deemed dangerous, deficient, or surplus to requirements. The residents of Lowood are there as part of wider philanthropic endeavour, which, in life as in fiction, would have benefitted from closer state oversight. That Jane survives—indeed seems to thrive academically and mentally—is down to her own resilient, heroic nature (and supernatural gifts, arguably) rather than any assistance from her family. She manages to find substitute carers for herself in the form of a friend and a teacher, much as she managed to do with Bessie and the kindly apothecary who helped free her from Gateshead. Her ability to look grateful even when she is not, is an important skill, and indeed features in many adoptee narratives. Her testimony, and her ability to both accurately record it and transmit it to those in power, is what ultimately saves her from being forever classed as an outsider. She has learned from her time with the

⁶² Even his ancestry is significant, as it was his mother who founded it—it is hard to conjecture as to whether she would be pleased or horrified at his current management style. Either possibility would go some way towards explaining why he is the way he is.

⁶³ Lowood's other enforced privations—cold, hunger, needless frailty—perhaps echo most closely those seen in Ishiguro's *Never Let Me Go* (2011) where dehumanised others grow up with only books and fragile friendships for comfort, much like Jane.

Reeds that her own evidence is likely to be of little or no value—her version of events will not be believed unless more socially ‘respectable’ witnesses offer some form of corroboration.

This will sadly be the template for certain investigations, more than a century later, into abuses at ‘homes’ and institutions in various jurisdictions. Victim-blaming occurs: Jane’s early ‘failure’ to display a ‘sociable and child-like’ nature was, in her aunt’s opinion, almost completely to blame for her exclusion from the family. Labelling her as ‘bad animal’ and ‘rat,’ her cousin John aims to dehumanise her and then mocks her for having been born into poverty: ‘you ought to beg.’⁶⁴ Their mistrust of her comes back perhaps to the usual fear that unwelcome or unforeseen relatives are inevitably predisposed to harming or usurping legitimate heirs. Jane, from infancy, was framed as an ‘ill-conditioned child, who always looked as if she were watching everybody, and scheming plots underhand.’⁶⁵ She is in adulthood again unreasonably ill-treated by Hannah, the gate-keeping servant of the Rivers family, who is repulsed by Jane, refusing her shelter at Moor House, even when she pleads frantically for help. Hannah leaves her outside, exposed to the wind and freezing, with an insightful comment: ‘You are not what you ought to be, or you wouldn’t make such a noise. Move off.’⁶⁶ The accusation is doubly harmful and othering: Jane is charged with vagrancy—a shameful enough thing—but also deemed ‘too other’ to be safely admitted over the threshold. When she is, however, finally reunited with the maternal side of her family and restored to her rightful inheritance, no laws have been broken. She has usurped no-one, despite having displaced her cousins from the legacy, which she quickly remedies by sharing her windfall with them. Her only transgression was to adopt a pseudonym (to escape Rochester and the scandal of a nearly bigamous wedding) but, as in all the best folklore, her real identity is revealed by the appearance of an object that reveals hidden truths. Her ability to capture likeness—which reveals truths, lost identities and ancestries—by drawing and writing echoes the work of those who record testimony in a bid to uncover wrongdoing. She has come full circle from her childhood, when she had mastered the skill of losing herself in pictures and books, or behind curtains (to briefly escape the ever-present abuse). She could become similarly invisible in times of crisis, as an adult, to hide from the gaze of the snobbish Ingrams. Being able to reverse engineer this small bit of ‘magic’—to draw

⁶⁴ *Jane Eyre*, p. 31.

⁶⁵ *Ibid.*, p. 31. She was so othered, and so feared, that she had to be banished completely from the family circle, exiled and excluded even whilst living in the house with them, and then dispatched and exposed to endure cold, hunger, and illness.

⁶⁶ *Jane Eyre*, p. 215.

out hidden truths that will challenge and alter prevailing, often unjust social orders—is what has allowed her to find her origins.

Law's role in all of this is to largely ignore the plight of orphans and marginalised others, leaving it to philanthropic endeavour and the ties of family to protect those who are vulnerable or exiled. Jane's triumph comes down to her ability to reveal hidden truths that law and respectable society might seek to conceal. This sets her apart from her monstrous counterparts, who achieve vengeful pyrrhic victories that only serve to reinforce their exclusion. And yet, even for Jane, as tends to be the norm in many fairy tales, the ending is not always straightforward. To the outsider, she has overcome much adversity, gained a family of her own, and inherited a fortune. Lurking in the background, however, is another inheritance, that might be regarded as inter-generational harm, which sees her repeat (albeit to a lesser extent) some of the othering that she suffered while living amongst the Reeds. After giving the reader a too-quick glimpse of her baby son, she dispatches Adele to a school abroad. She never recoils from the girl but neither does she fully embrace her in a maternal way, staying always in the role of governess. Having become her *de facto* adoptive mother by marrying Rochester she could have perhaps made a little space within the family for the orphaned girl. Arguably, this, may be because of Adele's hinted-at illegitimacy—she could perhaps be Rochester's child. Neither he nor Jane is obviously repulsed by the girl, but they equally do not go out of their way to enfold her within the comforts of family life. She is quite uncuddled, even by Victorian standards. Sending her away to school reinforces the stigma that attaches to having unknown ancestry and perhaps seems slightly hypocritical. Jane was after all fully prepared to live adulterously with Rochester, perhaps even bear him illegitimate children, before learning that his first wife Bertha had conveniently passed away (in a house fire, which is very apt in terms of the symbolism attached to home and hearths).⁶⁷

The novel warns of the dangers of looking for locked-away truths, especially those that have the potential to encroach on family sanctity, property ownership, or social customs. Kinship, whether legal, social, or genetic, can be a fragile thing, and easily lost, damaged or deformed into something ugly

⁶⁷ Bertha's incarceration at times seems not unlike that of the Magdalenes, in that her apparent madness seemed to either arise from or cause her 'wanton' behaviour. Her otherness fits the profile—she is of Creole extraction and therefore—to a Victorian reader—perhaps dangerously foreign and frightening. She fights back against her captivity, but largely spares Jane, in some senses warning her of the dangers of entering into matrimony and having to be hidden from public view. In respect of Adele, it should not have been seen as very scandalous to have kept the child at home or closer to home: on balance her return to France could be seen as a well-intended repatriation to her original birthplace, but it all seems a little harsh.

(the Reeds) or terrifying (Rochester's unhappy union with Bertha). Family ties can just as easily imprison as offer comfort or empower, just as kinlessness and otherness can be implied/manufactured even where the person deemed 'other' is respectable, legitimate, and gainfully employed. As Blanche Ingram opines on governesses, within Jane's earshot: 'half of them detestable and the rest ridiculous, and all incubi....'⁶⁸ This scene perhaps more so than any other explains why we tend to other the vulnerable. Those who are fearful of losing their own position, as Blanche clearly was, may be the most prone to othering. They perhaps do not want to be reminded of their own frailties. Likewise, this scene sets out how, even within the curtained off privacy of a comfortable home or family, it is still possible to be abused, othered, and excluded from the safe spaces of the familial. *Jane Eyre* reinforces the message that law does not guarantee safety or justice, within or outside of the family. As in many folkloric tales—and some dystopian narratives—extraordinary measures or supernatural interventions are sometimes needed to right perennial wrongs, especially in the absence of useful statute or precedent, or where there is an excess of superstitious belief or custom. Legislative frameworks aimed at alleviating poverty, for example, should offer some degree of protection to the most vulnerable, rather than worsening their situation through further exclusion that renders them invisible or voiceless. Criminalisation of the orphan (building upon the tradition of outlawing illegitimate births and unwed mothers) was 'a direct result of the abuse and lack of care they received' (Peters, 2000) from family, state, jurists, and wider society. A 'mode of narrating the orphan,'⁶⁹ as both penal and undisciplined, was, however, offset by the work of certain Victorian authors, not least Dickens, as the next section discusses.

3.4 Dickensian Orphans, and Foundlings: Critiques of Law and Policy

If you buried him fifty toes deep, and took me across his grave, I fancy I have to know, if there wasn't a mark above it, that he lay buried there?

—Monks, *Oliver Twist* (1838), p. 353

⁶⁸ *Jane Eyre*, p. 111.

⁶⁹ Peters, Laura, 'Orphan Texts' (2000) Manchester University Press: Manchester, p. 38.

Dickens has long been described as a 'champion of the oppressed' with an 'uncompromising sense of justice.'⁷⁰ Likewise, it has been argued that '...Never did novelist earn more worthily the right to be called a law reformer.'⁷¹ His varied depictions of orphans, foundlings, adoptees, and illegitimate children covered different—sometimes overlapping—categories of 'surplus' offspring and generally pointed to a socially constructed otherness, that highlighted the failings of law and custom, and the vagaries of human nature. As Zlotnick (2006) has argued, works such as *Oliver Twist* (1838) can be interpreted as a generally 'straightforward critique of the bastardy clause.'⁷² They also offer an important response to the deliberately crafted and maintained systemic inequalities that can arise from having a 'less than' equal, illegitimate birth status. This may be so even where there is a rudimentary legislative framework in place, aimed at (very basic) child protection,⁷³ and an inherent jurisdiction that could, in a crisis, make a child a ward of the court.⁷⁴ The Poor Law (Amendment) Act 1834 (containing the 'New' Poor Laws)⁷⁵ sought to address poverty, but it did so by framing the poor as idle and feckless beings in dire need of moral reform.⁷⁶ Newly carceral workhouse systems sharply rationed food and shelter in exchange for enforced labour, which had to be carried out within their grim, high-walled confines: access to relief was, like many things, 'dependant on residence'⁷⁷ and worthiness. Families were split up and segregated on entry, effectively orphanising—and further stigmatising—already vulnerable children, if they had not been

⁷⁰ Squires, Paul Chatham, 'Charles Dickens as Criminologist' *Am Inst Crim L & Criminology* (1938) 29, pp. 170–201, p. 171.

⁷¹ Anon. 'Dickens and the Law' *Can L Times* (1912) 32, pp 271–277, p. 271.

⁷² Zlotnick, Susan, 'The Law's a Bachelor: "Oliver Twist," Bastardy, and the New Poor Law' *Victorian Literature and Culture* (2006) 34 (1), pp. 131–146, p. 132.

⁷³ See, e.g., The UK's Factory Act 1833, The Mines Act 1842, and The Factory Act 1867 (on child workers); The Criminal Law Amendment Act 1885 (on the age of consent and the criminalisation of child prostitution); The Prevention of Cruelty to Children Act 1894, which criminalised neglect and ill-treatment; and The Children Act 1908 which restricted sales of alcohol and tobacco to children and covered 'juvenile courts' and probation officers.

⁷⁴ On the workings of Wardship and the inherent jurisdiction of the High Court (England and Wales), see Herring Jonathan 'Family Law' (2021) Pearson: London, p. 1329.

⁷⁵ They were, by 1844, partially reversed. See further Nutt, Thomas, 'Illegitimacy, Paternal Financial Responsibility, and the 1834 Poor Law Commission Report: The Myth of the Old Poor Law and the Making of the New' *The Economic History Review* (2010) 63 (2), pp. 335–361, on how the enforcement of paternal financial responsibility was meant to be the main focus of the reforms, but that instead 'the Poor Law Commissioners misrepresented the operation of the law and recommended the abolition of affiliation' (p. 335).

⁷⁶ For a useful account of the Poor Laws over a longer time frame, see Quigley, William P., 'Five Hundred Years of English Poor Laws, 1349–1834: Regulating the Working and Nonworking Poor' (1996) 30 *Akron L Rev* pp 73–128.

⁷⁷ Stokes Peter M., 'Bentham, Dickens, and the Uses of the Workhouse' *Studies in English Literature, 1500–1900* (2001) 41 (4), *The Nineteenth Century*, pp. 711–727, p. 711.

already abandoned, orphaned, or labelled illegitimate (Thane, 1978).⁷⁸ The 1834 legislative reforms, which promoted the use and ‘advantages’ of the workhouse system, were grounded in the findings of the Poor Law Commission Report of the same year. It has since been framed as having sparked ‘one of the most significant legal and administrative shifts in the history of illegitimacy’ on the basis that it not only eroded an unwed mother’s entitlement to any ‘parochial welfare assistance’ but also made it much more difficult to engender some degree of paternal responsibility and accountability (Nutt, 2010). A worrying myth attached to the enactment of these new Laws, ‘in both discourse and practice,’ which became ‘increasingly powerful across the nineteenth century in repositioning the status of mothers of illegitimate children as both morally blameworthy and welfare dependent.’⁷⁹ And yet, with an over-confidence that presages that of certain other reform-seeking Commissioners nearly two centuries later,⁸⁰ the authors of the 1834 Report blithely declared of its accuracy that:

Although occasionally it must happen that individual facts will be found misrepresented in some degree, the uniform tenor of a large body of evidence, collected in various shapes and from various sources, presents an argument for its general credibility, which even frequent inaccuracies in narration would not be able to overthrow.⁸¹

Thane (1978) made an interesting point on the segregation and separation of family members, on entrance to the workhouse, that it

...was intended...partly to discourage procreation among the poorest, but also to enforce recognition amongst them of the value of family life by means of its temporary withdrawal.⁸²

Dickens is perhaps similarly motivated, showing his readers what can happen when someone is deprived of kinship and identity, and how things

⁷⁸ Thane, Pat, ‘Women and the Poor Law in Victorian and Edwardian England’ *History Workshop* (Autumn, 1978) 6, pp. 29–51.

⁷⁹ Nutt, *ibid.* p. 359.

⁸⁰ See, e.g., Ireland’s McAleese, M., ‘Inter-Departmental Committee Report to Establish the Facts of State Involvement with the Magdalen Laundries’ (2013), <https://www.justice.ie/en/JELR/Pages/Magdal enRpt2013>; and The Commission of Investigation into Mother and Baby Homes, *Final Report* (2021) *Executive Summary* <https://www.gov.ie/en/publication/22c0e-executive-summary-of-the-final-report-of-the-commission-of-instigation-into-mother-and-baby-homes>, analysed in Chapter 4.

⁸¹ ‘Report of the Poor Law Commissioners’ *Law Mag Quart Rev Juris* (1834) 11, pp. 405–431, p. 405.

⁸² Thane, Pat *op cit.*, p. 37.

might take a turn for the better if or when they are reunited with their family, restored to their birthright, or—as in *Oliver Twist*—taken in by kindly strangers and transformed by law or custom into a 'legitimate' relative. As Sadoff (2014) argued, many of Dickens' warnings and messages have a timelessness to them, to the extent that often a 'Dickensian scenario preaches and disseminates new social and ideological meanings for ever-wider modern audiences.'⁸³ That said, Dickens' orphans and foundlings generally fell within the category of the 'commonly known figure of the neglected' or abandoned, abused, and destitute child, following in the better-heeled footsteps of the 'well maintained eighteenth-century orphan,'⁸⁴ who often had, from birth, a kindly benefactor, if not a decent trust fund. This generally kept them out of the orphanage or off the streets, even if they were afflicted with an illegitimate birth status. Gymnich et al. (2018) offer a useful summary of the contrasting positions of the 'surplus' Dickensian child to that of the 'wealthy ward' of earlier eras and genres:

...the situation of the Victorian orphan is by definition a precarious one. In a society that knew neither adoption laws nor reliable security networks for parentless children, the (young) orphan is dependent on others' goodwill as well as on his or her own resilience and ingenuity.⁸⁵

And yet, as Manheimer (1979) noted, 'despite their postures of pity, nineteenth-century novels resound with the success of orphans.'⁸⁶ *Oliver Twist* (1838) is a prime example of the enduringly popular trope of the heroic, good-hearted, and loyal orphan 'whose destitute and unmarried mother dies in a workhouse, leaving her young offspring to the tender mercies of the parish authorities.'⁸⁷ His journey back to his paternal origins directly contravenes the 'new' bastardy clause, with the naming of his father allowing Oliver to inherit his estate and thereby escape the novel's 'underworld of crime and poverty' to move into 'the sunshine of bourgeois domesticity, where he belongs by birth and disposition.'⁸⁸ Dickens was a harsh critic of the Poor Laws, although—as Zlotnick argues—his treatment of impoverished women

⁸³ Sadoff, Dianne F., 'Boz and Beyond: "Oliver Twist" and the Dickens Legacy' *Dickens Studies Annual* (2014) 45, pp. 23–44, p. 40.

⁸⁴ Nixon, Cheryl, *The Orphan in Eighteenth Century Law and Literature: Estate, Blood and Body* (2011) Routledge: Oxon, p. 6.

⁸⁵ Gymnich, Marion et al., *The Orphan in Fiction and Comics since the 19th Century* (2018) Cambridge Scholars Publishing: UK, p. 2.

⁸⁶ Manheimer, Joan, 'Murderous Mothers: The Problem of Parenting in the Victorian Novel' *Feminist Studies* (1979) 5 (3), pp. 530–546, p. 533.

⁸⁷ Zlotnick, p. 131.

⁸⁸ Ibid., Zlotnick, p. 132.

in the novel *Oliver Twist* tended to be a bit more equivocal.⁸⁹ Much more could perhaps have been made of the way in which ‘unmarried mothers were always more likely to be sent to the workhouse than granted outdoor relief and, once there, to be left in no doubt of their shameful condition.’⁹⁰ Even the novel’s closing line reinforces that Oliver’s mother had been ‘weak and erring.’⁹¹ Wilson (2018) argues however that Dickens’s critique of the bastardy clause in this text includes a plea to position mothers as the head of the family: here her story is key, as it is her name—rather than his father’s—that leads to Oliver’s discovery of his true identity.⁹²

The narrative is in many ways in keeping with other aspects of popular orphan fiction which tend to turn upon complex ‘...disruption[s] of family life and its reestablishment ... illegitimacy and mysterious origins... from the beginning the text accustoms readers to a vision of family dysfunction.’⁹³ The blood-tie clearly matters, with Dickens ensuring that ‘consanguinity proper is repeatedly marginalised as something established and signalled by nature alone, regardless of nurture, something declaring itself in untaught behaviour, detected in mysterious recognition.’⁹⁴ Oliver’s ‘substitute carers,’ represented by various characters but perhaps most significantly by Fagin and then Nancy, vie for connection with him through the possession of him. Fagin, in many ways his de facto foster father, stresses the importance of nurture: ‘Once let him sense that he’s one people; once fill his thoughts with the idea that he’s been a thief; and he’s ours! Ours for his life.’⁹⁵ As in all the best fairy tales too, small but richly symbolic objects such as lockets, locks of hair, papers, mirrors, and portraits enable escapes and important revelations. Here, Oliver’s resemblance to his mother serves to evidence his tenuous connection to the kindly Mr Brownlow in suitably melodramatic fashion:

⁸⁹ Ibid., adding that the novel perpetuates certain stigmas against working class women, by producing ‘middle-class, domestic women as having no relationship to the marketplace but as possessing the self-control poor women lack’ (p. 143). It is Nancy’s maternal nature—and her death—that are pivotal however to the eventual rescue of Oliver. See further Wheeler, Burton M., ‘The Text and Plan of “*Oliver Twist*”’ *Dickens Studies Annual* (1983) 12, pp. 41–61 on how—and why—Dickens seems to have quite suddenly ‘turned his attention from Oliver to Nancy because she could exhibit what Dickens was later to call... “The principle of Good surviving through every adverse circumstance”’ (p. 57).

⁹⁰ Thane, *op cit.*, p. 32.

⁹¹ *Oliver Twist*, p. 515.

⁹² Wilson Michelle L., ‘Buried Narratives: Exhuming the Mother’s Story in *Oliver Twist*’ *Victoriographies* (2018) 8 (3), pp. 247–266, arguing also that there is an inherent violence associated with the concept of inheritance, both within this text and the law itself.

⁹³ Parker, David, ‘*Oliver Twist* and the Fugitive Family’ *Dickens Studies Annual* (2000) 29, pp. 41–59, p. 42, stressing also the anarchy that runs through much of the text (p. 53).

⁹⁴ Parker, *ibid.*, p. 52.

⁹⁵ *Oliver Twist*, p. 198.

...he pointed hastily to the picture over Oliver's head, and then to the boy's face. There was its living copy. The eyes, the head, the mouth: every feature was the same. The expression was, for the instant, so precisely alike, that the minutest line seemed copied with startling accuracy!⁹⁶

This focus upon accuracy could be a Dickensian nod towards the dangers of lacking precision and authenticity in other things, such as identity-disclosing paperwork (original birth certificates, trusts instruments, wills), given the power that such things have to alter lives and fortunes. Names and naming clearly matter, as ever. In *Great Expectations* (1861), for example, the orphaned Pip claims to have named himself (underscoring his otherness and vulnerability due to being parentless) but then states that he 'came to be called Pip,' indicating his lack of agency in the matter.⁹⁷ As Morris (1987) argues, 'part of Pip's bad faith throughout the novel is his belief in his own freedom to name - that by naming or narrating he is imparting some truth.'⁹⁸ In his case, unpleasant revelations will attach not to his name or identity, but to the 'shameful' fact of who his benefactor was (which, to Pip's mind, makes him a bit of an imposter within polite society). Estella is an adoptee 'proper' in the sense that she was not taken in by a family member, but 'commissioned' through Miss Haversham's request that a child be found for her to raise. She is the subject of hidden truths but is never burdened with the revelations of them (beyond that of her own bad behaviour, belatedly).⁹⁹ Evidence, it seems, can be hidden away—or falsified—to conceal uncomfortable truths and preserve the privacy interests of those who need or wish to remain anonymous. If we accept that 'secrecy...is part of the stock-in-trade of melodrama,'¹⁰⁰ then it makes sense to associate it with difficult areas of family law—and family life—that are often fraught with dark emotions such as fear and guilt, namely, illegitimacy, parental rejection, and hidden away genetic connections. Meckier's (2015) take on the disclosure of truths in Dickensian settings is hard to disagree with, and in many ways perhaps summarises the thinking behind the widespread sealing or alteration of birth and adoption records, once adoptions began to be formalised in law:

⁹⁶ *Oliver Twist*, p. 107.

⁹⁷ Morris, Christopher D., 'The Bad Faith of Pip's Bad Faith: Deconstructing *Great Expectations*' *ELH* (Winter, 1987) 54 (4), pp. 941–955, p. 944.

⁹⁸ *Ibid.*

⁹⁹ Which, in fairness, was part and parcel of the terms of her belonging to her adoptive mother.

¹⁰⁰ Sasaki, Tory, 'What Estella Knew: Questions of Secrecy and Knowing in *Great Expectations*' *Dickens Studies Annual* (2017) 48, pp. 181–190, p. 185, musing also on the various 'improbable knowings' seen within the text.

Revelation of one's secret in sensation novels of the 1850s and 60s, such as *Bleak House* and *The Woman in White*, usually brings instant ruin, even death. But Pip realizes that there are good secrets as well as bad, that some need to be kept longer than others, and a few are best never disclosed at all.¹⁰¹

Genetic likenesses can speak volumes however, just as the complete lack or loss of resemblance to one's kinfolk can be harmful. As with dystopian tales, discussed in Chapter 5, mirrors may be made deliberately scarce or absent, for various reasons, including the need to hide truths, maintain social or political stability, and minimise or deny genetic connections. Fagin reveals, just before being led off to the gallows, that Oliver's papers can be found stashed 'in a canvas bag, in a hole a little way up the chimney in the top front-room.'¹⁰² This is entirely in keeping with folkloric norms, and the powerful symbolism of the fireplace as a marker of family life, inclusion, legitimacy, and safety. Here, it will reverse Oliver's otherness. As Chapter 2 set out, chimneys, hearths, and fireplaces often serve as both entrance and exit points for terribly disturbing others (changelings, imposters, monsters) and as the site of significant revelations over wrongdoing or identity truths. They seem to help too with testimony gathering and moments of rebellion against injustice (*The Goose Girl*, *Hansel and Gretel*).¹⁰³ Monks (Oliver's villainous half-brother, using a pseudonym) likewise essentially confirms Oliver's identity when he engages with the Bumbles, who can be seen as representing a disinterested, profit-driven system that thrives on family dissolutions:

...she hastily threw upon the table a small kid bag scarcely large enough for a French watch, which Monks pouncing upon, tore open with trembling hands. It contained a little gold locket: in which were two locks of hair, and a plain gold wedding-ring.¹⁰⁴

These stolen items symbolise both the presence and loss of familial ties, evidencing Oliver's ancestry and his moral entitlement to his father's legacy, despite his illegitimacy. As in many folkloric tales, objects can be deeply significant, not only in relation to how they might reveal or verify key truths,

¹⁰¹ Meckier, Jerome, 'Estella, Dead or Alive? Consideration and Incrimination in *Great Expectations*' *Dickens Quarterly* (September 2015) 32 (3), pp. 221–228, p. 225.

¹⁰² *Oliver Twist*, p. 509.

¹⁰³ Heathcliff and Frankenstein's creature have life-changing moments close to the firesides of their substitute relatives (described above). See further Sadoff, Dianne F., 'Boz and Beyond: "Oliver Twist" and the Dickens Legacy' *Dickens Studies Annual* (2014) 45, pp. 23–44 on how 'the melodramatic mode in fiction promiscuously borrowed from the storytelling conventions of Gothic, farce, Newgate tale, and romance to create a historically situated, hybrid form' (p. 23).

¹⁰⁴ *Oliver Twist*, p. 356.

but also in their ability to achieve a sort of 'representational alchemy that takes identity, makes it into a material thing, and subjects it to dangerous rules of ownership, exchange, and power.'¹⁰⁵ For the adoptee, these three concepts may be pivotal to our understanding of adoption's dark history of infant commodification, and of our place in the world—indeed within our families, birth and adoptive—especially if some form of trafficking, infant commissioning, identity-alteration, or generalised othering has happened at some point in our origin story. The notion of 'portable property' will likely resonate, given that adoptees were prone to being commodified—and industriously trafficked—as surplus infants.¹⁰⁶

On the related issue of 'theft,' Dickens inverts the trope of the fortune-usurping foundling, by having Oliver's legitimate half-brother take on the role of malevolent imposter (Miss Havisham has a similarly unsavoury male half-sibling who cheats her). He also highlights how succession laws might provide for those othered and excluded by sociocultural norms and prejudices. They could clearly disinherit those who were deemed unworthy of familial protections and legacies. Oliver's reunion with some members of his birth family, though gradual, is a successful one. He finds a maternal aunt and forgives his evil half-brother, and is then adopted by the friend of his late father, setting the seal on his acceptance into respectable society.¹⁰⁷ Those who bore him ill will are quickly brought low by the workings of poetic and literal justice.¹⁰⁸ It merits mention however, that, as in various fairy tales, such a 'magical' happy ending might not always be all that it seems, or very likely to occur. As Hoel (2018) suggests, many of Dickens' simple resolutions occur only after an odd 'series of miracles' and coincidences occur. This could be seen as undermining those elements of sharp social criticism for which he is famous but does also work as a device to highlight that certain outcomes are simply unrealistic.

¹⁰⁵ Grass, Sean, 'Commodity and Identity in "Great Expectations"' *Victorian Literature and Culture* (2012) 40 (2), pp. 617–641, p. 617 noting how Wemmick's scavenged, disturbing collection of 'portable property' speaks to various truths and crimes.

¹⁰⁶ Grass, *ibid.*, arguing also that *Great Expectations* 'centers narratively, materially, and symbolically upon the porous boundary between identity and property in nineteenth-century England, and upon the consequences of making identity into a commodity for the market' (p. 618).

¹⁰⁷ *Great Expectations*, p. 511. Oliver's usurping half-brother comes eventually to a sad but well-deserved end, so justice is served in that sense also.

¹⁰⁸ The Bumbles end up in the 'very same workhouse' where they had mistreated others (p. 513); Monks, 'still bearing that assumed name,' quickly squanders the money that Oliver gifted him from the inheritance and re-engages in 'fraud and knavery' to die in prison (p. 511).

These ‘overt markers of fictionality’ and variously ‘doubled plots and characters’ point to the possibility however that Dickens might well have had in mind less fantastic, more reality-grounded endings, at times.¹⁰⁹

In *Great Expectations* (1861)—which had several different endings—even the one that is ‘meant to be a happy one’ still had a ‘remaining tinge of ambiguity’ which might be taken as ‘Dickens’ conscious or unconscious acknowledgment of a conflict.’¹¹⁰ He gets his message across to a wide readership by not scaring his audience away with too many horrific truths about how we treat our ‘surplus’ children and vulnerable mothers. He adds in the odd ‘miraculous’ event to guide the narrative towards a more compassionate resolution than too much reality might allow for. And yet, as Bowers (2012) has argued, ‘though Dickens communicated empathy for people who are outcasts, he also perpetuated discrimination’ in his work, for example, in terms of ethnicity, disability, gender, and birth status.¹¹¹ In *Great Expectations*, for example, Pip is delighted to discover Estella’s secret parentage (her father is Magwitch the transported criminal, her mother Molly most likely a murderess) because this might serve to lessen her haughtiness, and bring her back within his reach, lifting him ‘from despair.’¹¹² This particular truth never reaches the ears of Estella, so reunion never occurs between them. Dickens was perhaps advocating for caution in the handling of sensitive information that might spark harms or scandal. Questions must be carefully put. When Pip asks his sister about convicts, she is quick to admonish him (‘they always begin by asking questions...’¹¹³) and to remind him sharply that she has kept him alive—if somewhat undernourished—and raised him herself ‘by hand.’ His ingratitude is apparently the root cause of most if not all of his problems, to the extent that ‘the warmth of hearth and home is contrasted with the coldness of [his] ambition’¹¹⁴ for the rest of the novel. It is this which takes him to the more dangerous substitute home of Miss Havisham,

¹⁰⁹ Hoel, Camilla Ulleland, ‘Secret Plots: The False Endings of Dickens’s Novels’ *Victoriographies* (2018) 8 (3), pp. 230–246. See also Ballinger, G., ‘Haunting the Law: Aspects of Gothic in Dickens’s Fiction’ *Gothic Studies* (2008) 10 (2), pp. 35–50 on how the many horrors of the law are enhanced by the use of Gothic scenes across his different works.

¹¹⁰ Friedman, Stanley, ‘Estella’s Parentage and Pip’s Persistence: The Outcome of “*Great Expectations*”’ *Studies in the Novel* (1987) 19 (4), pp. 410–421, p. 418.

¹¹¹ Bowers, Arlene, ‘Charles Dickens, Social Worker in His Time’ *Social Work* (2012) 57 (4), pp. 297–307, p. 301.

¹¹² Friedman, *op cit.*, p. 419.

¹¹³ *Great Expectations*, p. 14.

¹¹⁴ Paris, Bernard J., ‘Great Expectations: Character, Plot, Rhetoric, and Narrative Technique’ in *Imagined Human Beings: A Psychological Approach to Character and Conflict in Literature* (1997) NYU Press, p. 119.

and away from the closest thing he has to a nurturing parent figure, the affable and caring Joe Gargery.

Significantly, Dickens depicts several adoptive relationships, both formal and informal, that are clearly abusive mentally and/or physically (Miss Havisham and Estella, Pip and his sister, for example) but he also shows instances of substitute parenting that equate to rescue (Magwitch's secret funding of Pip's progress, Joe's kindness towards him at differing stages of his life). There is no guarantee that being raised with one's genetic relatives will bring protection from harm, in Dickens' world: he makes the argument that law's privileging of family sanctity and privacy could easily have adverse consequences for those banished from the fireside. This can also be said of those who, like Pip, are taken in, but still violently excluded or abused within the confines of the family unit. Substitute family—even where there is some original, genetic connection—is, similarly, not necessarily the cozy sanctuary that it should be. Thus, in *Great Expectations*, Pip's older sister, Mrs Joe—though she takes him in after he is orphaned—frequently brutalises him. She is usually clad in a 'coarse apron...' with an 'impregnable bib in front, that was stuck full of pins and needles'¹¹⁵ which sometimes make their way into the daily bread as she viciously slices it.¹¹⁶ As if to underscore her infertility, she is reluctant to serve as an adoptive mother in any way: as Pearlman (1978) notes, 'Next to Lady Macbeth's, this is literature's least nurturing bosom.'¹¹⁷ The dangerous mother—whether in the form of foster, birth, or adoptive—is a repeated theme, both here and in other eras and genres. As Nelson (2001) observed, late-nineteenth and early-twentieth-century society seems to have been particularly 'obsessed with motherhood,'¹¹⁸ especially when it goes wrong in some way. As readers we still tend also to 'cheer the heroine, hiss the villainous mother, and lean back in our seats satisfied that we have served the cause of justice.'¹¹⁹ *David Copperfield* covers not dissimilar territory when we see an orphan yet again abused by an evil substitute parent (Murdstone) who repeatedly strives to bring about the boy's downfall. He

¹¹⁵ *Great Expectations* p. 9.

¹¹⁶ *Ibid.*, p. 10.

¹¹⁷ Pearlman, E., 'Inversion in "*Great Expectations*"' *Dickens Studies Annual* (1978) 7, pp. 190–202.

¹¹⁸ Nelson, Claudia, 'Nontraditional Adoption in Progressive-Era Orphan Narratives' *Mosaic: An Interdisciplinary Critical Journal* (2001) 34 (2), *Children's Literature*, pp. 181–197, p. 82.

¹¹⁹ Manheimer, *op cit.*, adding further that 'Since the time of Cinderella, fictional heroines have struggled against destructive maternal figures to the accompaniment of sympathy from writer and reader...but our reaction makes us complicit in a set of standards that merit questioning...the destructive maternal character often possesses revolutionary energy. The *Terrible Mother*, far from being an individual deviant, frequently embodies a radical indictment of her society' (p. 531).

can be seen as an ‘inversion’ of the character Magwitch in *Great Expectations*, who, though a criminal, still acts as a ‘good’ de facto adoptive father to Pip by becoming his hidden benefactor (although both he and Murdstone do have something of the cemetery about them¹²⁰). In terms of substitute mothering, there are similar parallels between the disturbed Miss Havisham (*Great Expectations*) and the helpful, if eccentric, Betsey Trotwood (*David Copperfield*) once the latter gets over her initial disappointment at her great nephew not having been born a great niece and made into her namesake. Much like the witch in *Hansel and Gretel*, Miss Havisham attempts to ruin the lives of the children that she encounters, by bending them to her will. Her lawlessness is not unlawful—her abusive behaviour is a private matter that takes place behind the closed doors that enable family life and privacy. That she is eventually consumed by her own home fire—the double-edged symbol of belonging and almost all things familial—seems an apt if harsh outcome, given that she had belatedly begun to repent.¹²¹ Betsey Trotwood’s charges fare much better than Estella and Pip do, in many ways, although emigration was still required for them to start a new life. Arguably, the practice of sending ‘orphans’ and foundlings abroad (discussed more fully in the next chapter) may have been on Dickens’ mind, given that he was critiquing the increasingly inadequate domestic systems of child welfare.

It is unsurprising that many of Dickens’ orphan narratives are grounded in an ‘ideology of thrift, hard work, and obedience,’ with a need for obvious gratitude towards those who might rescue and raise the surplus child. That said, and despite his obvious opposition to the Poor Laws and the workhouse system, Dickens did not always clearly

establish an absolute distinction between the institutional and the humane... the social itself is fictional, and even the workhouse can be woven into plots of love as well as of suffering.¹²²

This is in keeping with the highly equivocal nature of many a narrative on orphan rescue, which sometimes frame adoptions and reunions as easy, leaving out the complexities of relinquishment, rejection, and forgiveness. Oliver, for example, remains ‘utterly unmarked by the workhouse,’¹²³ which is perhaps the most incredible aspect of his story. As Baldridge (1993) has

¹²⁰ Pearlman, *op cit.*, 117 p. 196.

¹²¹ Pearlman, p. 198.

¹²² Stokes, Peter M., ‘Bentham, Dickens, and the Uses of the Workhouse’ *Studies in English Literature, 1500–1900* (Autumn 2001) 41 (4), *The Nineteenth Century*, pp. 711–727, p. 713.

¹²³ Stokes, *ibid.*, p. 723.

argued, Dickens' decision to depict the orphan as 'morally immune from the effects of his brutal childhood environment' was perhaps down to the author's own

...acute anxiety about the ability of the bourgeois hearth to inculcate a moral regimen sufficient to withstand the threats and solicitations lurking beyond what the author wished to imagine as the charmed circle of Victorian domesticity.¹²⁴

It is noteworthy that this 'charmed circle' of home life did not guarantee protection from harmful influences, internal or external. Miss Havisham's situation was due in part to the machinations of her malicious half-brother: the home can be a place of danger where lasting damage occurs, as evidenced by the condition of Satis house and its deranged owner. Dark otherness resides there, but the malignity comes not from unwelcome outsiders or intruders, but from disloyal kinfolk who have violated the norms and rules of family life. This mocks the notion of natal or legal connection: even marriage is seen as a thing that might bring losses, of self, safety, and sanity. Miss Havisham commissioned her adopted daughter, asking her lawyer to find her an orphan that she would 'rescue,' not from a childhood of poverty or neglect, but from future events which might never happen (to avoid a repetition of her own fate, in other words). Her raising of Estella—the dutiful adopted daughter—saves her from 'infertility,' loneliness, and spinsterhood, but also inverts the notion of family life as a nurturing experience, aimed at preparing children to form meaningful bonds in later life. She has 'stopped time' (by pausing her clocks at the moment of her jilting), left food out to rot, and wears only one shoe, so that escape from Satis house is essentially impossible. Everything is highly symbolic, pointing to a warped and increasingly toxic vision of the 'nurturing' family home. She painfully crafts her adopted daughter into a semi-monstrous heir and requires that several key truths are kept hidden. Her experiment is a success in the sense that Estella, unlike the fairy tale Gretel, fails to rebel or escape, fully obeying the witch's strictures, and in the process harming and consuming her 'sibling,' Pip.

That she is later seen defeated, in the aftermath of an abusive marriage, is not surprising, given how the consequences of intergenerational harm tend to unfold. And yet, hers is not the only 'celibate but strangely fertile'¹²⁵ family to feature in the literature on orphan narratives. The desire to address infertility

¹²⁴ Baldridge, Cates, 'The Instabilities of Inheritance in "Oliver Twist"' *Studies in the Novel* (1993) 25 (2), pp. 184–195, p. 184.

¹²⁵ Nelson, p. 184.

was a darkness-leading trope frequently seen in many folk and fairy tales (*The Juniper Tree*, *Little Snow White*) just as it appears in certain dystopian novels (*The Handmaids Tale*, *The Giver*). As Nelson has argued, the existence of certain families can ‘reflect social trends,’¹²⁶ just as changes to law or custom might perpetuate or challenge these same trends. Arguably, the dissolution or denial of familial bonds is similarly telling, if not more so, in terms of revealing certain prejudices and biases still colour attitudes towards certain ‘others,’ who must be excluded from the protections of family life and family life rights.

3.5 Conclusion

The traditional adoption order [has] typical legal characteristics- absolute, permanent and exclusive.

—O’Halloran Kerry, *Adoption and Human Rights: International Perspectives* (2018) Routledge: London, p. 308

Law and policy reforms in this era—such as they were, for adoption remained largely informal and unregulated in most jurisdictions in this era—tended to reinforce centuries of foundling and orphan traditions by prioritising and preserving the sacred spaces of domesticity for a privileged few and barring any unwelcome outsiders. It makes a grim sort of sense that the permanent dissolution or denial of unwelcome genetic connections—to prevent uncomfortable reunions or questions from arising in the future—would be enshrined in law or policy. Widespread cross-border indentured transplantation of ‘orphans,’¹²⁷ and the sealing or falsification of their birth records, would soon follow, to facilitate the ‘trade’ in adoptees and child workers. Legislation aimed more specifically at embedding meaningful child protection measures would eventually appear,¹²⁸ but this often seemed to be

¹²⁶ *Ibid.*, p. 184.

¹²⁷ See further McClaughlin, Trevor, ‘Lost Children? Irish Famine Orphans in Australia’ *History Ireland* (2000) 8 (4), pp. 30–34; see also Robins, Joseph, *The Lost Children: A Study of Charity Children in Ireland, 1700–1900* (1980) Institute of Public Administration: Dublin.

¹²⁸ Thane, *op cit.*, n notes that the ‘...growing tendency in the Edwardian period to replace family with state care of children was reinforced by the Children’s Act 1908, which allowed the state to take into care children believed to be neglected or delinquent’ (p. 47) adding that ‘...necessary though such powers often were, this Act, like others, was criticised ...for intruding into working-class family arrangements in a way which would not have been countenanced by or for the better-off. They could imply lower standards of morality and child care among the poor without taking account of the economic conditions which made “ideal” child care very difficult.’

drawing upon the traditional myths, shames, and stigmas of earlier periods in time, especially in relation to the overarching need for gratitude, secrecy, and the severance of natal connections. All of these things pointed to the supposed 'benefits' of being deemed orphan rather than illegitimate or an unwanted, surplus child. Various myths surrounded maternal relinquishment—that it was always consensual, for example—and these have had lasting impacts on mothers and their estranged descendants (as Chapter 5 argues). Dickens' critique of English law and policy was, therefore, both prescient and perennial in nature, often equally applicable to systems seen in other jurisdictions.¹²⁹ It stressed the failings of church, state, and family, highlighting how some form of 'private benevolence' was usually preferable to state-funded support (which mainly consisted in the cold 'refuge' offered by the workhouses and industrial schools). The 'corruptive forces of society,'¹³⁰ therefore, posed further risks to orphans and foundlings. Arguably, such thinking could be used to justify the philanthropic (and highly lucrative) 'export' of children across national borders, which remains even yet a dangerous thing in terms of commodifying and exiling the 'surplus' child.¹³¹ As Fagan (2010) has argued (albeit in connection with youth justice systems), the 'transcendent nineteenth century child-saving movement,' though riddled with paradoxes, still served to cast enduringly long shadows on certain aspects of child law, policy, and practice.¹³²

The next chapter looks at the concept of 'orphan rescue' narratives, which gradually changed over the course of the Edwardian era and the early twentieth century, reflecting how the rights—and voice—of the child eventually rose to greater prominence, in both law and policy. Adoptions began to be formalised, largely in response to growing concerns over the ill-treatment of adoptees, especially those who were sent abroad, for example as indentured servants or boarded out farm children. Greater secrecy in the form of closed or falsified records also took hold, as the notions of home, family and

¹²⁹ See further Ferriter, Diarmaid, 'Occasions of Sin: Sex and Society in Modern Ireland' (2009) Profile Books: London, p. 37 on the influence of Victorian culture in Ireland.

¹³⁰ Wheeler, Burton, M., 'The Text and Plan of "Oliver Twist"' *Dickens Studies Annual* (1983)12, pp. 41–61, p. 41.

¹³¹ See further Parker, Roy, 'Uprooted: The Shipment of Poor Children to Canada, 1867–1917' (2008) Bristol University Press: UK; Moran, Gerard, 'Sending Out Ireland's Poor: Assisted Emigration to North America in the Nineteenth-Century' (2013) Four Courts Press: Dublin.

¹³² Fagan, Jeffrey, 'The Contradictions of Juvenile Crime and Punishment' *Daedalus* (2010) 139 (3), pp. 43–61, p. 44 outlining how 'juvenile incarceration, and juvenile justice' have been 'bounded by the transcendent nineteenth century child-saving movement, the procedural rights movement of the 1960s, and the raw emotional politics of violent crime and punishment in the past three decades.' Arguably, this analysis can be applied to the development of adoptee rights, as increasingly vocal calls for open birth records came to be made in the second half of the twentieth century, alongside more visible reunions and calls for redress and apology.

private life rights also gained ground. As ever, the shaming of mothers was a common trope, with illegitimacy still an issue: most of the grateful, resilient orphans seen in works of popular fiction are genuinely orphaned, rather than abandoned or relinquished, and they sometimes have additional qualities to comfort the reader, such as a fine pedigree, relentlessly cheerful disposition, or wealthy deus ex machina benefactor who saves them at the last minute from penury. Their capacity for deep gratitude is often their most notable and useful characteristic, while their ability to offer detailed testimony of their experiences is generally what leads to just resolution (restoration to an inheritance, removal from an inadequate care setting, absorption into a caring, substitute family).

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4

Adoption's 'Golden Age': From Orphan Rescue to the Rights of the Child

4.1 Introduction

I'm not like a n'orphan.

—Lovejoy Mason, *An Episode of Sparrows* (1955, p. 32).

Various mythologies have been attached to the 'adoption industrial complex'¹ which established itself in the late nineteenth century, both within and across national borders, bolstered by the belief that many orphans and foundlings are easily uprooted and happy to be transplanted.² As Drain (1986) argued, there was 'an entire tradition of nineteenth - and early twentieth - century "orphan tales"...explicitly concerned with the problem of identifying and occupying [the] rightful place'³ of the orphaned—or orphanised—child,

¹ See further McKee, Kimberly, 'Monetary Flows and the Movements of Children: The Transnational Adoption Industrial Complex' *Journal of Korean Studies* (2016) 21 (1), pp. 137–178 on how South Korea's relationship with the United States became a global 'template for a multi-million-dollar industry' and how 'smaller deterritorialized sites - the South Korean state, orphanages, adoption agencies, and American immigration policy' worked together to enable this.

² See Oh, Arissa H., 'War Waif to Ideal Immigrant: The Cold War Transformation of the Korean Orphan' *Journal of American Ethnic History* (2012) 31 (4), pp. 34–55 on the 'historiographical disappearance' of Korean refugee orphans was reconfigured as an immigration narrative: 'Korean orphans are typically described—if they appear at all—as an early group of immigrants...their refugee roots have been erased from our historical imaginations.' p. 35.

³ Drain, Susan, 'Community and the Individual in *Anne of Green Gables*: The Meaning of Belonging' *Children's Literature Association Quarterly* (1986) 11 (1), pp. 15–19, p. 16.

both in terms of finding a substitute family and in relation to wider society and culture. This chapter argues that the Victorian emphasis on orphan and adoptee heroism (and the benefits of displaying deep gratitude) was still quite evident in works of fiction in Edwardian times and throughout much of the twentieth century. This tied in well with the sociopolitical need to 'manage' unmarried motherhood and mask illegitimacy, often via the overseas export of suitably adoptable children. Proehl (2015) has similarly observed that many orphan rescue narratives tended to 'evolve throughout the nineteenth and twentieth centuries, [to] reflect historical shifts in racial, gender, and class hierarchies.'⁴ The concept of orphan rescue did not lack an international dimension; it was also frequently linked to the issue of infertility. As Tessler et al. (2011) have outlined (in respect of the United States),

...the origins of international (originally known as inter-country) adoption can be traced back to the Displaced Persons Act of 1948 and the Refugee Relief Act of 1953, which enabled white American couples to adopt roughly 7,000 children, mostly war orphans from Korea, Japan, and China. The major expansion of international adoption programs in the following decades has gone well beyond these modest beginnings, to the point where international adoption has become a regular part of America's social and cultural landscape and a popular way to start a family.⁵

The need for rescued-orphan gratitude was also seen in relation to Korean international adoptions. Kim (2007) has described how even yet certain 'representations optimistically construe adoptees as cultural "ambassadors" and economic "bridges," by encouraging them to take part in state-led reunion initiatives (beginning in the 1990s). These not only encouraged adoptees to return to their country of origin to [re]discover their roots, but also urged them to use their connections to aid the development of socio-economic links between their 'motherland' and 'its seven million compatriots

⁴ Proehl, Kristen, 'Sympathetic Childhoods: Girl Orphans, Adoptions, and Reimagined Families in Sentimental Literature' *Women's Studies Quarterly* (2015) 43 (1/2), pp. 295–298 (reviewing Singley, Carol J., 'Adopting America: Childhood, Kinship, and National Identity in Literature' and Sanders, Joe Sutliff, 'Disciplining Girls: Understanding the Origins of the Classic Orphan Girl Story').

⁵ Tessler, Richard et al., 'The Many Faces of International Adoption: Endings, Beginnings, and Everything in Between' *Contexts* (2011) 10 (4), pp. 34–39, p. 34 arguing that, as a social practice, international adoption remains 'complicated and complex in both racial and global terms, a terrain that brings out some of the contradictory positive and problematic aspects of contemporary American race relations, and a practice with ramifications reaching well beyond American borders' (p. 35). They argue further that international adoption also exposes deep fault lines that divide whites from blacks, rich from poor, and west from east' (p. 39).

abroad.⁶ This model for repatriation was not without controversy. It ushered in new forms of 'social marginalization and discrepant cosmopolitanism,' underpinned by neoliberal values which seemed to 'celebrate transnational adoption as the fast track to cosmopolitan privilege.'⁷ Kim (2012) has since argued further that such 'redressive' actions often translated into a lucrative form of 'adoptee tourism.' The thinking behind such schemes was possibly 'influenced by kinship ideologies' which were themselves

...complicated by a range of emotional, psychological, and social factors, including the cultural stigmas that tend to place the burden of blame and humiliation on mothers.⁸

Mother-shaming is not unique to any particular jurisdiction or era. It may occur irrespective of the reason(s) for maternal relinquishment, and despite the occurrence of highly visible 'emotional apologies' offered by the ruling elites.⁹ Adoption's generally grim past (and often controversial present) notwithstanding, the lingering, popular appeal of certain 'classic' orphan rescue tales merits analysis. These novels offer useful insights into what society might expect from its rescued orphans, foundlings, and adoptees, in terms of appropriate behaviour and attitudes. This chapter looks firstly to some of the better-known works of the early twentieth century, which generally concerned stoic, cheery protagonists—unburdened by any awareness of rights issues—displaying deep gratitude for having been saved from a life of poverty or neglect. Generally, a kindly, deep-pocketed benefactor will appear: they may be a distant relative or friend, or a complete stranger. Books such as Hodgson Burnett's *A Little Princess* (1908) and *The Secret Garden* (1911)—together with Montgomery's seminal, enduringly popular *Anne of Green Gables* (1908)—typify the popular, generally idyllic, tales of fosterage or adoption. On the surface they are entertainingly sentimental fables, showcasing the orphan's heroic ability to withstand severe adversity and reminding the reader of the need for a steady supply of altruistic substitute families, to help address the growing problem of 'surplus' or unparented children. A closer reading, however, reveals glimpses of profound injustice

⁶ Kim, Eleana, 'Our Adoptee, Our Alien: Transnational Adoptees as Specters of Foreignness and Family in South Korea' *Anthropological Quarterly* (2007) 80 (2), Kinship and Globalization, pp. 497–531, p. 497 analysing the 'conflation of "blood" with "kinship" and "nation".'

⁷ Kim, Eleana, 'Human Capital: Transnational Korean Adoptees and the Neoliberal Logic of Return' *The Journal of Korean Studies* (2012) 17 (2), pp. 299–327, p. 299.

⁸ Ibid., p. 321.

⁹ Ibid., p. 322.

and unconscious bias, alongside entrenched markers of otherness underscoring the differences in treatment that can set adoptees apart from the rest of 'kept' society. In *Anne of Green Gables*, for example, it is a matter of dress (her lack of puffed sleeves) but names and naming are also telling indicators: as Lovejoy overhears in *An Episode of Sparrows*, 'No-one who loved their child could give it a name like that.'¹⁰ Others are faced with locked doors or off-limits spaces (*The Secret Garden*; *A Little Princess*) or a lack of birthday (*The Little White Bird*).

This era also saw the introduction of more legislation aimed at protecting child welfare and regulating the lucrative export of vulnerable infants so as to prevent—or at least perhaps minimise—systemic child abuse.¹¹ J.M Barrie's *The Little White Bird* (1902) is included here on the basis that much of it can be read as a critique of negligent, dangerous parenting, and of the inadequate systems of substitute care (including the informal trafficking of infants abroad) that were then happening. Some of the imagery is distressing, not least because it speaks to perennial issues and scandals involving vulnerable children and the difficulties and dangers of attempting contact or reunion with lost relatives, post-relinquishment. The chapter looks then at child protection and parental neglect in a particularly apposite mid-century novel (Godden's *An Episode of Sparrows* ([1955]) which marks a departure from the usual orphan rescue narratives. Lovejoy, the main character, does not wish to be rescued, because law's solution to her predicament will be to incarcerate her. The book captures in detail the cumulatively harmful effects of child neglect (maternal) and brutal othering (societal), as seen from the perspective of an abandoned little girl faced with entering an orphanage. It offers a timeless critique of law, policy, and society, and of the mechanisms and institutions meant to be overseeing the protection of acutely vulnerable children. Significant also is the setting—post-World War II London—which contrasts sharply with the apparently idyllic rural landscapes of most orphan narratives (farm chores permitting). The timing is noteworthy too, given that the concept of human rights was beginning to gain wider public awareness in the wake of global conflict. The narrative makes plain why the notion of children's rights would not achieve more widespread recognition (via the Children's Convention 1989) for another three decades. It places the blame for child neglect squarely upon those who were formally tasked with protecting the vulnerable, namely the state, church, and charitable sector. The local community is also shown to be profoundly lacking in compassion

¹⁰ Godden, Rumer, '*An Episode of Sparrows*' (1955) Virago: London, p. 30.

¹¹ See further Keating, Jenny, '*A Child for Keeps: The History of Adoption in England, 1918–45*' (2009) Palgrave Macmillan: England.

and interest. Injustice and discrimination are evident throughout, with new forms of shame coming into play, namely, poverty, homelessness, and illiteracy. All of these novels draw upon the beliefs and prejudices of earlier eras: the othered child (whether orphan, foundling, bastard, or cheery adoptee) must overcome archaic sociocultural biases, and navigate life via a patchy—or absent—legal framework. The chapter closes with an analysis of some of the key human rights provisions—and a few recent cases—that are relevant to adoption, identity rights, and the issue of reunions, arguing that there is still a long way to go before othering on the basis of birth status is consigned to history.

4.2 Orphan(ised) Girls and 'Lost' Boys: The Need for Gratitude

Maybe they were out of boys of the brand you wanted.

—Station-master, *Anne of Green Gables* (1908) Loc. 177

The durable tropes of orphan rescue and deep gratitude tie in well with the concept of the surplus child, especially in post-war periods, when 'overseas' adoption or fostering tended to gain popularity. Well into the twentieth century, certain jurisdictions (such as Ireland, the United States, Canada) continued to embrace the Victorian notion that placing poor children into institutions or private homes (or some combination thereof) might help '...counter the perceived threat of dependent children developing habits of dependency that would continue into adulthood.'¹² As Birk (2013) noted of the American Midwest, the need for 'placement homes dominated child-welfare discourse between 1880 and 1920' with farm life apparently offering a particularly 'wholesome option'¹³ for the parentless child. Church-run 'orphan trains' similarly served to feed 'the American ideal of rugged individualism by divesting the children of their foundling stigma and giving them a fresh start.'¹⁴ Issues of racial discrimination were apparent, however, in both

¹² Birk, Megan, 'The Farm, Foster Care, and Dependent Children in the Midwest, 1880–1920' *The Journal of the Gilded Age and Progressive Era* (2013) 12 (3), pp. 320–342, p. 321, noting also that 'these children, sometimes erroneously labeled orphans because most possessed at least one living parent, were defined as dependents because they relied on public or private charity outside their family home.'

¹³ Birk, *ibid.*, p. 321.

¹⁴ Creagh, Dianne, 'The Baby Trains: Catholic Foster Care and Western Migration, 1873–1929' *Journal of Social History* (2012) 46 (1), pp. 197–218, p. 199.

domestic and international adoption practice and discourse, whether unparented children were being placed into state, church, or private substitute care.¹⁵ Such thinking was not unique to the United States or Canada: Irish authorities were also dispensing orphaned or orphanised children to domestic rural foster carers or boarding them out as farm workers.¹⁶ There was often an abject lack of supervision, given the ad hoc and remote nature of such placements: the potential for a quick rehoming should the placed children not prove suitable, was also significant.¹⁷ Even Montgomery's much-loved *Anne of Green Gables* (1908)—often seen as the quintessential fable on the more heart-warming aspects of fosterage and adoption¹⁸—begins with the vulnerable Anne at risk of being returned to the 'orphan asylum' of another Province. It is made clear that her ageing prospective adopters had really needed a sturdily useful male child to help out with the farm chores.

Other stipulations also applied to the commissioning of such keep-earning adoptees, which was apparently not without risk, given that families might be bringing an unknowable, potentially dangerous 'other' into the inner sanctum of their home. As even the kindly Marilla observed of the proceedings,

We thought we'd get a boy...you know how desperate hard it's got to be to get hired help...at first Matthew suggested getting a Home boy. But I said 'no' flat to that. 'They may be all right...but no London street Arabs for me...I'll feel easier in my mind and sleep sounder at nights if we get a born Canadian.'¹⁹

Casual racism and sexism aside, many works of popular literary fiction from around this time—especially the classic and comforting 'orphan girl novels of the new century'²⁰—did tend to minimise or ignore the darker aspects of such placements, stressing instead their manifold benefits to both

¹⁵ See further MacDonald, David B., *The Sleeping Giant Awakes: Genocide, Indian Residential Schools, and the Challenge of Conciliation* (2019) University of Toronto Press: Toronto.

¹⁶ See further Gray, Jane, 'The Circulation of Children in Rural Ireland During the First Half of the Twentieth Century' *Continuity and Change* (2014) 29 (3), pp. 399–421, who argues that the 'circulation of children and adolescents formed part of a set of flexible, adaptive practices oriented towards preserving and supporting kinship groups, and in some cases towards improving family status by facilitating upward social mobility.'

¹⁷ On the international child rescue movement, see further Swain, Shurlee, 'Sweet Childhood Lost: Idealized Images of Childhood in the British Child Rescue Literature' *The Journal of the History of Childhood and Youth* (2009) 2 (2), pp. 198–214.

¹⁸ Sanders, Joe Sutliff, 'Disciplining Girls: Understanding the Origins of the Classic Orphan Girl Story' (2011) John Hopkins University Press: US, p. 92.

¹⁹ *Anne of Green Gables* (1908) loc. 111 kindle ed. The question of taking in an Indigenous child would obviously not have arisen, given the use of Residential Schools. See also Dubinsky, Karen, *Babies Without Borders: Adoption and Migration Across the Americas* (2010) University of Toronto Press: Toronto, p. 9.

²⁰ Sanders, *op. cit.* p. 89.

the rescued child and their adoptive or foster parents. As Swain (2009) has argued of orphaned female heroines,

The child of the Romantics was pure and innocent, a creature of nature and simplicity, yet at the same time innately pious, standing as a beacon of hope in an increasingly disordered world.²¹

Issues of reunion or contact with birth relatives seldom arise within these narratives: the orphaned or orphanised child has usually been fully severed from their family of origin. Genetic relatives or ancestors—if they feature at all—might be depicted as deliberately absent or prone to mistreating, rejecting, or abandoning their young relative. That said, occasionally a very worthy orphan might suddenly find themselves repatriated to their birthright or heritage, to some extent, via restoration to their rightful inheritance, or some other reward for exemplary behaviour. Law generally has very little to do with bringing about such redress: legislation aimed at enabling or formalising adoptions, or protecting vulnerable children was still sparse, if yet in existence at all, within most jurisdictions. The concept of the child's best interests was open to widely differing interpretations but could be invoked to justify the placing of such children into the substitutive care of the state, church, or private homes. The intervention of a kindly benefactor was the usual, near-magical, means of escaping neglect, abuse, poverty, and otherness. Unsurprisingly, this meant that orphans needing rescue often had to be seen as suitably worthy, especially if placed with a substitute, 'stranger' family rather than with a relative: gratitude and resilience were key, even if *de facto* adoptive placements were often marked by sharp modes of discipline.

The eponymous orphaned heroine of *Anne of Green Gables* frequently looked 'very much like a disciplinary object who would be at home in a girl's novel decades earlier,'²² which might explain her widespread and enduring popularity. The novel deviates from some of the other 'orphan girl' rescue texts of its era however in the sense that most of these other books had largely moved away from sentimentality and modes of 'public and conscious affective discipline.'²³ Anne's adoptive mother, the initially gruff spinster Marilla, 'frequently tries empty morals and harsh (though never corporal) justice on Anne, but nothing works so well as affection.'²⁴ This makes Anne

²¹ Swain, *op. cit.*, p. 200.

²² Sanders, *op. cit.* p. 90 a.

²³ Sanders, *ibid.*, p. 90 adding that other novels of the time had '...embraced story telling as a way to enchant and thereby direct objects of discipline.' As such, *Anne of Green Gables* 'feels nostalgic... relentlessly recount[ing] the successes of moral suasion.'

²⁴ *Ibid.*, p. 90.

a sort of 'poster girl' for the symbiotic benefits of adoptive placements. The pluckily resilient and profoundly grateful orphan will clearly be an asset, and worth giving hearth space to, with only minimal chastisement needed to ensure good behaviour. Anne is not an international adoptee in the usual sense nor is she a blank slate infant freshly orphaned or abandoned. She has, however, been commissioned from a Nova Scotia institution, and is genuinely orphaned and legitimate, unlike some of her literary peers, which perhaps explains why she is more easily absorbed and welcomed into her new community. As Drain (1986) argued however, often such 'belonging actually means conformity,'²⁵ to the extent that even Anne, from the outset of the novel, is almost entirely defined by the place to which she now belongs, rather than by her birthplace, original surname, or even the name of her adoptive parents. Prior to her being collected by a bewildered Matthew, she is presented as the featureless—and therefore unthreatening and malleable— orphaned child, who, gender yet unknown, is simply 'waiting patiently at the Bright River station.'²⁶ Her 'plasticity'²⁷ is highly apparent from the moment we meet her: later, she is willing to accept an unjust blaming for the loss of a brooch, rather than plead her innocence, so as to remain in the good books of her adoptive mother (presaging the sacrifice she will later make in forsaking her chance to study elsewhere). She has just enough biddability to reassure readers—and the adopting Cuthbert siblings—that their significant investments of time, effort, and financial support will ultimately be worthwhile. These do of course pay off when Anne dutifully declines her place at Queen's College to return home to support the ageing, bereaved Marilla.

It perhaps helps too that, as a child, she never displayed much curiosity about her origins. She sought only the freedom to engage in imaginary musings, and to be one day gifted with a dress sporting the de rigueur puffed sleeves of her peers. Once achieved, this small change of 'uniform' brings her much comfort, lessening her sense of otherness, and confirming that she has now been accepted as a member of her new family and community. She must, however, continue to earn the honour of wearing them: 'I couldn't begin at all. Then I thought of my lovely puffed sleeves and took courage. I knew that I must live up to those sleeves....'²⁸ The happy 'fairy tale-esque' nature of Anne's story still leaves room however for small yet significant markers of otherness to set her apart. Prior to Matthew's gifting the dress, her clothing

²⁵ Drain, Susan, 'Community and the Individual in *Anne of Green Gables*: The Meaning of Belonging' *Children's Literature Association Quarterly* (1986) 11 (1), pp. 15–19, p. 16.

²⁶ *Anne of Green Gables*, Loc 149.

²⁷ Swain, *op. cit.*, 202.

²⁸ *Anne of Green Gables*, p. 200.

sharply distinguished her from the other local girls, a reminder that she is utterly dependent upon her new family's generosity (of spirit and of pocket) for her eventual acceptance into their wider society. In addition to tolerating injustices—such as that which attached to the missing brooch—she must also apologise profusely for having lost her temper with an unpleasant neighbour who had cruelly insulted her appearance. In other words, certain aspects of her identity must be suppressed to permit her continued presence in the substitute home.

A similar situation arises in Hodgson Burnett's *A Little Princess* (1905) where a freshly orphaned girl, Sara Crewe—having already lost her mother in infancy—survives extreme adversity through good-natured resilience, which allows her to both accept and adapt to her new situation of othered exclusion, while somehow still retaining her sense of self. Previously the seminary's wealthiest student, her father's sudden death and apparent bankruptcy reduce her circumstances to less than that of a servant and leave her open to highly abusive treatment by her substitute carer, the headmistress Miss Minchin. She is made to live apart from the rest of the students, and to earn her keep by doing menial tasks and looking after the younger girls, in addition to being always cold, hungry, and dressed in rags. As in *Anne of Green Gables*, it is her innate ability to win certain people over through kindness and storytelling—and at times to imagine herself elsewhere—that enables her survival and eventual 'repatriation' to her inheritance and original station in life. Prior to her near-magical rescue however, she must self-mother and act as a parent to the younger girls at her school: she also feeds a friendly rat, just for good measure. As is often the tradition in such stories, and in reality, the capturing and hearing of witness testimony are crucial to the achievement of justice. Sara is observed and overheard by the servant of her future benefactor, who, handily, is the wealthy friend and former business partner of her late father. She is also sustained at various points by highly symbolic, 'magically' appearing gifts that speak to the universal need for nurture, home comforts, and familial life (food, books, clothing, blankets, a warm fire, a rose-coloured lamp) all of which were denied to her upon being banished in exile to the 'orphanage' of the school's threadbare attic. Once rescued, she becomes once again a lucrative commodity, which enrages her substitute carer Miss Minchin, who is incapable of offering any apology for her ill-treatment, bar a grudging admission that she might perhaps have treated the girl a bit more kindly. This is ruined by her assertion that 'but for me she should have starved in the streets.'²⁹ The headmistress's main concern is that her school's

²⁹ *A Little Princess*, p. 173.

reputation will be ruined: she fires a final, slanderous insult at the girl, as she is leaving to join her new guardian: 'The child is neither truthful nor grateful.'³⁰

The significance of apology-refusal—(and the tendency of those in power to victim-blame those vulnerable others that they have abused or neglected)—is examined more fully in Chapter 5, but it is noteworthy here that Sara says little if anything in public about her ordeal once she has left the seminary's attic. This perhaps reflects her stoic disposition, but it might also be due to the chronic difficulties of speaking out against social institutions, or of admitting to having been harmed by periods of adversity. Shame and stigma can have lasting, irreversible effects, as this novel seems to capture despite its feel-good ending. She later recounts and reframes her story as an adventure, for the entertainment of the well-to-do, suitably named Large family, who, sitting by their own warm fire, take much delight in the privations that she had suffered in the 'coldness and bareness' of her attic bedroom. Indeed, she seems now to belong to the Larges, happily commodified: 'The mere fact of her sufferings and adventures made her a priceless possession.'³¹ In this sense, disappointingly, the usual hierarchies are maintained,³² though she does at least enable the rescue of her friend Becky, the maid, and then, just as the book draws to its close, quickly finds and funds a system to feed bread to starving local waifs. That she acts only in a private capacity is perhaps an admission by the author of the perennial difficulties and challenges attaching to traditional systems and institutions: as in other novels examined here, private philanthropy seems often to be the only realistic option, despite its risks (which few novels of this era seemed prepared to explore, unlike Dickens, for example, who seldom missed an opportunity to depict corporal punishment or a battered, underfed urchin). Law's role also merits mention: Miss Minchin, desperate to keep custody of Sara, suggests that 'the law will interfere in my behalf'³³ to return the girl to the school, only to be advised, in a courtroom like scene, that the girl, now wealthy under a trust fund, will be autonomously deciding upon her own fate. She then argues an extremely narrow interpretation of the best interests principle, claiming that children apparently and 'unfortunately never know what is best for them.' Her suggestion that Sara should 'do her duty' to her late father by

³⁰ Ibid., p. 175.

³¹ Ibid., p. 179.

³² Gruner, Elisabeth Rose, 'Cinderella, Marie Antoinette, and Sara: Roles and Role Models' in *A Little Princess. The Lion and the Unicorn* (1998) 22 (2), pp. 163–187. Though Cinderella-like in nature, Sara's story differs in significant ways: her rescue from poverty and abuse does not depend upon her making a 'good' marriage, 'nor is her endurance either mute or passive' (p. 168).

³³ *A Little Princess*, p. 174.

'coming home' with her is politely, but powerfully declined, with her former carer accused of mistreatment:

Sarah took a step toward her and stood still. She was thinking of the day when she had been told that she belonged to nobody, and was in danger of being turned into the street: she was thinking of the cold, hungry hours she had spent alone... You know why I will not go home with you, Miss Minchin... you know quite well.³⁴

In amongst the 'magical,' happy endings of even the most sentimental examples of children's literature are just enough warnings and critiques of various systems and customs to remind the reader of the urgent need for law reform in this era. Rescues sometimes occurred, but they did so only rarely, and against a distressing sociocultural backdrop of ongoing abuse, failed systems, inadequate laws, and unaddressed harms. The 'Romantic' orphan or foundling seemed to be constantly and repeatedly grateful, heroic, and worthy in the sense of not being illegitimate. Even as a female who will not threaten the inheritance of a male relative, she still generally has to await or summon up a magical or lucky coincidence, by which a wealthy, generous saviour will appear to save the day. As Kimball (2002) further observed, many 'writers valorize the Romantic child-state as somehow better than a state of adulthood.'³⁵ This is a dangerous practice, grounded in the assumption that childhood is almost always a safe, protected space. Moreover, Sarah's rescue seems to have been held in abeyance while her advocate observed her, unseen, and gauged her manner and history, to ensure that she was the 'right' child to be rescued, on the basis of lineage. Her salvation occurs, therefore, not as of right, but by virtue of her genetic connections to respectable society. Law's contribution was to enable property transmission rather than child protection. Had Sarah been working long hours in an unsafe factory, rather than labouring for her reluctant 'foster mother,' she might have been covered by legislation, which reveals much about the nature of child rights at this point.

Barrie's *The Little White Bird* (1902) introduces both the character and the concept of Peter Pan, himself a lost, forgotten-about child, who has ceased to be fully human. Though the book is in many ways a deeply problematic work, it still offers some of this era's most frightening images of orphanisation and

³⁴ Ibid.

³⁵ Kimball, Miles A., 'Aestheticism, Pan, and Edwardian Children's Literature' *CEA Critic* (2002) 65 (1) *Special Issue: Scholarly Approaches to Literature for Children and Adolescents*, pp. 50–62, p. 50, arguing further that 'the figure of Pan in these works allows us to recognize the ironies surrounding the Romantic child, encouraging us to look more carefully at children's literature that uses this literary device to represent the status of childhood' p. 61.

othering. Everything is imbued with a symbolism that speaks to commodification of the surplus child and the loss of familial ties: the narrator reveals for example that his pet dog is often mistaken for his imaginary child. He and the dog are pictured being amused by a street toy that depicts a 'woman, a young mother flinging her little son over her head with one hand and catching him in the other,'³⁶ especially when she drops the child. As Mickalites summarises, the book can be interpreted as an 'Edwardian commercial fantasy of endless consumption'³⁷ where even babies can be easily commissioned by mail order, an industry overseen and enabled by birds, who send their own offspring to turn into infants. Children can be easily lost too, as happened to Peter Pan, who now exists in a strangely frozen, exiled present that serves to both deny his past and ignore the future. To say that Barrie 'treats Peter and the Romantic child with a carefully studied cynicism,'³⁸ is to understate the distressing impact of certain parts of the narrative. His failed reunion with his mother is in equal measure heart-breaking and the stuff of nightmares, particularly perhaps for adoptees considering an attempt at contact with estranged relatives:

He went in a hurry in the end because he had dreamt that his mother was crying...he flew straight to the window, which was always to be open for him. But the window was closed, and there were iron bars on it...there is no second chance, not for most of us. When we reach the window it is Lock-Out Time. The iron bars are up for life.³⁹

To reinforce his exile and enforced otherness, we see that he has since been replaced by another male infant, who sleeps peacefully in his mother's arms, as she fails to hear—perhaps even ignores—Peter's desperate cries at the barred window. The impact of this 'Lock-Out Time' is lifelong and dehumanising: it is intergenerationally and socially harmful as Peter will later persuade other children to try and forget their parents. That said, when he lives amongst the fairies of Kensington Gardens, he has retained 'a vague memory that he was a human once,' which sees him act as substitute carer for infants similarly lost, neglected, or displaced. He is similarly kind to house-swallows, because of the folkloric belief that these tiny birds are the spirits of deceased infants, trying to return home. He watches out for any children that might

³⁶ *Little White Bird*, p. 24.

³⁷ Mickalites Carey, 'Fairies and a Flâneur: J. M. Barrie's Commercial Figure of The Child' *Criticism* (2012) 54 (1), pp. 1–27, p. 1.

³⁸ *Ibid.*

³⁹ *Little White Bird*, p. 91.

have gotten lost, or somehow 'fallen unnoticed from their perambulators,'⁴⁰ moving them to a fairy-built house for emergency shelter overnight (which, of course, vanishes away in the morning light). If he is too late to save them from exposure, he digs a grave and erects a small headstone, kindly putting them in twos 'because it seems less lonely.'⁴¹ And yet, Barrie—who in real life informally adopted the orphaned children of a couple he was friends with—adds a chilling caveat, that critiques both negligent parents and the system of rescue that Peter Pan has devised:

...how strange for parents, when they hurry into the Gardens at the opening of the gates looking for their lost one, to find the sweetest little tombstone instead. *I do hope that Peter is not too ready with his spade.* It is all rather sad. (emphasis added)⁴²

It is a prescient warning of the need for robust child protection systems, but also a perennial reminder of how easily family ties might be lost, injudiciously interfered with, or simply forgotten about in the rush to bury the mistakes—and wrongs—of those tasked with caring for the most vulnerable members of society.

4.3 Gardens as Homeplace and Warning

Young plants are the same—as babies; that's why they call—a seedling bed—a nursery. They need—food and—warmth and quiet and—loving.
—Mr Isbister, 'An Episode of Sparrows' (1955, p. 147).

The 'secret' gardens of the Romantic and Edwardian eras—despite the often-sentimental narratives that unfold within them—can sometimes remind us of the dark woods and forests of many folkloric tales. Conversely, they can call to mind some of the ruined landscapes of dystopian fiction, which speak to varied injustices and deliberately hidden away evidence of rights violations. They can serve to represent the original or substitute home and offer sharp critiques of the inadequate or dangerous homeplace or family unit. Such gardens may be safer or more dangerous than the original familial space, or they might present different challenges, for example in terms of

⁴⁰ Ibid., p. 110.

⁴¹ Ibid.

⁴² Ibid.

enabling or preventing reunions, helping to heal relationships, or 'curing' the harms of a flawed or dangerous childhood, to some extent. They can serve as a 'powerful mythologem' (Stolzenbach 1995), underscoring how, very often, to be orphaned or abandoned in childhood is to be prematurely forced into a quasi-adulthood, where one must work hard, often singlehandedly, to care for oneself and/or vulnerable others, often by crafting—from very little—a nurturing shelter.⁴³ In Hodgson Burnett's *The Secret Garden* (1911), two neglected, profoundly othered cousins—one orphaned, another half-orphanised by chronic paternal rejections—slowly bond over the discovery of a high-walled, locked garden. Mary Lennox, the initially unlikeable main character, is a materially spoiled child, but terribly unwanted and overlooked almost to the point of infanticidal neglect. It is remarked upon several times within her earshot that she has not inherited her mother's good looks or sociable nature, and that her parents were egregiously negligent. She swiftly learns that she 'had never seemed to belong to anyone even when her mother and father had been alive.'⁴⁴ Symbolising the neglected child—but inverting how the practice of child exposure usually went about—she is forgotten by everyone in her household and left behind alone (but for a small snake) during a fatal cholera outbreak at her parents' plush bungalow in India. But for the accidental intervention of the 'state' (represented here by the military, who are shocked at her predicament despite having heard or seen some early warning signs of it) she would likely have died of hunger or a snake bite.

At the start of the novel, Mary could have passed for a fairy changeling, by virtue of her aloof 'old woman' behaviour, 'little thin face,' and 'sour expression,' and she is essentially treated as such by those who encounter her, not least her mother who leaves her 'outside' the family circle (such as it is) to be indifferently cared for by servants. She would slap her caretaker Ayah when displeased, because no one had ever taught her how to behave, in direct opposition to her literary 'sibling' Sara Crewe, who, as an affectionately raised '*Little Princess*' remained kind and patient even when starved and ostracised. Her survival, unlike Mary's, was pretty much inevitable, so long as she kept telling stories and maintained her good behaviour, she only had to stay alive long enough for a *deus ex machina* rescue. Mary has much less going for her in terms of indifferent upbringing, plain looks, and dodgy temperament: she expresses neither concern nor compassion, for example, for the maid Martha's underfed, overcrowded family, because she herself has never known hunger or want. Her salvation lies in her developing the ability to form

⁴³ Stolzenbach, Mary M. 'Braid Yorkshire: The Language of Myth? An appreciation of '*The Secret Garden*' by Frances Hodgson Burnett' *Mythlore* (Winter 1995) 20 (4) (78), pp. 25–29, p. 26.

⁴⁴ *The Secret Garden*, Loc 157.

meaningful bonds with others, especially those who might be equally lonely: a robin—separated from his family, possibly abandoned—and the gardener Ben Weatherstaff, who admits to having a similar loneliness to Mary's. Lightly chided by the pragmatic Martha, she sets about righting old wrongs, solving mysteries, and unlocking forbidden doors: she tames and restores the overgrown garden, uncovering difficult truths, whilst mothering her frail cousin Colin, who, like herself, had been cruelly hidden away.

A key message seems to be that inadequate parenting can take many forms beyond that of physical abuse and neglect of basic needs. Material comforts have little meaning against a backdrop of emotional abandonment and unkindness that can lead to a dangerous type of exposure in the psychological sense, where children are utterly excluded from the protections of family life and wider society and rendered monstrously other as a result. In Mary's case, two kinds of family (birth and adoptive) have failed her, so that she must turn to outside things, to craft a substitute family of her own making: nature, animals, and friends such as Dickon, who can 'whisper things out of the ground' in fairy-like fashion and is raising an abandoned fox cub and a baby crow. It is the 'adopted' robin that helps her find the missing key to the off-limits, hidden garden, which she gradually cultivates, as she simultaneously tries to heal her abandoned—essentially imprisoned—cousin Colin. Significant signposts have helped her realise that family ties matter and must be discovered, repaired, or preserved, not least the little mouse family hiding safely in the sofa cushion, and Martha's tales of her own large household, who, though poor, seem content. Again, the relief of poverty does not seem to be a major concern here, as it seemed to be—to some extent at least—in *A Little Princess*. Rather, the harms of neglectful parenting are explored, consisting here in the ignoring of children's emotional needs and the walling away of uncomfortable truths. The children—much as Lovejoy Mason will do a few decades later in *An Episode of Sparrows* (1955)—must take a stand against the inadequate grownups and parents who have failed them. Mimicking the Kensington Garden Fairies of *The Little White Bird*, they build around themselves a safe haven, physical and emotional, from the ground up, in the form of the repaired secret garden. Unlike the magical, temporal constructions of Barrie's story—which dissolve with the morning mist—these hard-won gardens are self-built places, crafted by the orphaned or orphanised children of literary fiction rather than by magic. They are more enduring, and more representative of the key aspects of family life, offering more than just basic shelter from the elements: they represent the unearthing of damaging secrets, and the unpleasant addressing of them. They show how the honing of a safe

space—where matters of shame might be discussed, and stigmas dispelled—is absolutely essential to attempting meaningful redress. The hastily erected fairy houses—built to be pretty, and useful in a short-term emergency—are not designed for longevity: the fairies quickly lose interest in the children who have wandered or fallen into their sacred space, which can make for a dangerously disinterested substitute home (or system of child protection), where unpleasant realities are neither acknowledged nor addressed. A not dissimilar, ancient ‘myth of Arcadia’ can be seen in real life, via the assumption that transplantation might serve to heal all ills and that those who dwell close to nature—far from the overseeing gaze of the state—are somehow less prone to engaging in acts that might harm the vulnerable child.⁴⁵ Birk’s comment on rural substitute homes (in the United States, but equally true of other jurisdictions) undermines their idealised vision as perfectly healthy, morally virtuous sites for child-rearing:

...some farmers regularly returned children who could not or would not work, making the placement home temporary for many children...some farmers took advantage of this “free” labor by overworking children placed with them. Some farmers denied children schooling or proper care and even returned them to an institution after a season of back- breaking labor.⁴⁶

Honeyman (2001) has similarly argued that ‘in the modern American adult imagination, the concept of childhood has been conflated with nostalgia for an agrarian, simpler past.’⁴⁷ It is ironic that Hodgson Burnett—and to a lesser extent Godden—seem to be advocating for the varied benefits of outdoor ‘farming’ work, by having their young, generally female, protagonists engage in hard graft, cultivating or restoring gardens far away from the gaze of adults who would be expected to oversee their care and protection, or at least take some notice of them. They knowingly rule break by creating these gardens, in the sense that they are trespassing and transgressing beyond what they are permitted to do within their community or family. In doing so they are highlighting the deficiencies of family, society, and lawmakers, who are all oblivious to the dangers of these inadequate childhoods. These fictional gardens of children’s literature thus represent safe spaces in terms

⁴⁵ Stolzenbach, *op. cit.*, p. 29.

⁴⁶ Birk, *op. cit.*, p. 325, adding how ‘stories filled the media of foster children abused, killed, unsupervised, or lost in the system. Indeed, the weaknesses of the foster-home system eventually corresponded to problems that progressives sought to remedy in farm placements over one hundred years earlier.’

⁴⁷ Honeyman, Susan, E., ‘Childhood Bound: In Gardens, Maps, and Pictures’ *Mosaic: An Interdisciplinary Critical Journal* (2001) 34 (2) No. 2, A Special Issue: *Children’s Literature* (June 2001), pp. 117–132, p. 118.

of offering a substitute home or family, and the chance to recover or gain authenticity of self. Our traditional sociolegal and cultural preoccupations with accumulating and possessing things, and with inheriting them, are of course frequently tied to specific places, meaningful names, or revered ancestries. The notion of social respectability is likewise often indicated by the presence of some tangible or unseen border or boundary, underpinned by laws or customs that can easily operate to exclude unwelcomed others. As ever, this is a means of protecting and prioritising the 'legitimate,' non-othered relative. Such systems can be dangerously double-edged, given the complex realities and dangers of family life and childhood. As Honeyman (2001) has suggested, there are many

fragile conceptual barriers that are necessary for preserving the concept of childhood as a simple, totalized social space. Indulging in the escapist pleasure of constructing nostalgic worlds for fictional children, adults must carefully enclose childhood to explain its inaccessibility, yet grasp it.⁴⁸

Lawmakers, however, have been tasked with somehow protecting those children for whom the concept of childhood is far from idyllic, whether they are being raised within or without the variously conceptualised 'enclosures' of the family and family life rights. Child protection laws and policies in most jurisdictions no longer look to the masking of illegitimacy as a primary aim. The notion of the surplus child has changed too, from that of the infant whose 'shameful' origin must be somehow obscured (or whose existence might prejudice the survival of the wider community), to that of the at-risk, likely older, child in dire need of protection from abuse and/or neglect at the hands of their relatives. The commissioning of children is still an issue, as a means of addressing infertility, with the use of orphanisation still evident, especially to deal with other deemed-surplus things, such as the presence of unwelcome family histories or ties that might prejudice 'new family permanence' or result in child harm.

As Eckford-Prosser (2000) has argued (albeit not in respect of child law, but with a still-relevant focus on child rights), there are still 'multiple ways in which children are colonized by various discourses which purport to understand them.'⁴⁹ It is, therefore, often difficult to work out how a child—and their needs—can 'be discussed without being turned from thing to

⁴⁸ Ibid., p. 131.

⁴⁹ Eckford-Prosser, Melanie, 'Colonizing Children: Dramas of Transformation' *Journal of Narrative Theory* (2000) 30 (2), pp. 237–262, p. 259.

object.’⁵⁰ This seems especially true of those laws and policies that might easily commodify (and permanently other) certain children, depriving them of certain fundamental rights that are readily afforded to the rest of the population: access to information, equality of treatment, and family life. Godden’s *An Episode of Sparrows* (1995) deals with all of these rights, against an increasingly uneasy backdrop of child neglect and emotional abuse. Law (and custom) feature throughout, as do shaming and stigma, over poverty and parental abandonment (rather than any question of legitimacy). The narrative centres upon a gradually deserted, socially excluded child, Lovejoy Mason, and her efforts to cultivate a small garden amongst the bombed-out ruins of London’s back streets. She is othered throughout and suffers want, abuse, and kinlessness. The story is told largely from her perspective and is significant for offering prescient insights into the early workings of the UK’s care system, and its inherent flaws and weaknesses (many of which are still apparent). Though she lacks a family she assembles a small group of de facto substitute carers, and is ultimately saved from having to enter an orphanage through the combined efforts of some of them. Most have been similarly othered by their unseeing community and wider society, which is more concerned with keeping up appearances and the exclusive nature of social ordering. Godden dares also to paint a disturbing picture of child neglect, occasioned by a feckless, disinterested mother who vanishes halfway through the book, after trashing the room that Lovejoy had so carefully prepared for her, in advance of a rare visitation. The workings of child protection law are called into question, repeatedly. Its ineffectiveness is made clear: various legal processes (including the reduction of juvenile criminality) are shown here to be corrupt, unjust, or unseeing, or a combination of all three of these things. In the end Lovejoy is saved not by the system or people tasked with protecting her but by the ad hoc, extraordinary efforts of private individuals who were usually overlooked themselves by society.

Olivia, a frail ‘spinster,’ is her unlikely, reclusive saviour. As Blackford (2018) has noted of Montgomery’s *Anne of Green Gables* (1908), a sort of ‘parallel growth’ can occur between the child and her ageing female protector, in that both figures must ‘assert their independence and empower themselves’ to achieve child protection. As such, there are ‘broader implications’ for both ‘social reform and feminism’⁵¹ which are only lightly touched upon here.

⁵⁰ Ibid.

⁵¹ Blackford, H., ‘Unattached Women Raising Cain: Spinsters Touching Orphans’ in *Anne of Green Gables and Uncle Tom’s Cabin’ South: A Scholarly Journal* (2018) 51 (1), pp. 36–53. Not only does the analogy of the slave orphan underscore Anne’s entrapment in a system that traffics children and bears visceral prejudice; the parallel growth in the spinsters, who assert their independence and empower themselves to protect the girls, also suggests broader implications in social reform and feminism.

Olivia's interventions effect a compassionate, workable solution, in sharp contrast to the ideas put forward by deliberately unseeing philanthropists who carry out a disinterested supervision of the various systems. Their blind-eyed mismanagement allows for many injustices to occur, mirroring the errors made by other overseers of child protection, across various jurisdictions, so that numerous violations of human dignity went unchallenged for many decades. Small, subtle acts of state or church-led othering—forcing orphans and foundlings to wear a uniform, making them invisible yet obviously different for their own protection, forbidding them from practising certain religions—combine here and coalesce into the sort of othering can have life-long adverse effects. It makes narrative sense that reunions will either never happen (Lovejoy's mother vanishes and we can safely assume she will not return) or perhaps occur only as highly flawed, belated events. When Lovejoy is permitted to see Tip Malone again, her closest confidante, under supervision, she is so vexed that she ends up arguing with him, rejecting him, and destroying a revered item—a statute of the Virgin Mary—that had previously brought her much comfort (and indeed served as a mother-figure at variously fraught points in the book).

Long before she is literally removed from society's sight and placed in the prison-like children's Home, she had already been sharply othered however, and excluded from many of the benefits of community citizenship. It is ironic that she would have been one of the few people able to appreciate the posh, fenced off Garden in the Square and the value of the 'good garden earth,' having been deprived of such a thing herself. Her existence has been rootless, travelling about with a disinterested mother. She can appreciate those aspects of family life that have been repeatedly denied to her and which others simply take for granted: the loyalty of siblings (Tip's violently protective sisters) and the defensive—verging on ugly—mothering demonstrated by the local women, as they viciously protect their children from cold, dirt, and hunger, not to mention the dangers of crossing swords with a delinquent, 'criminalised' Lovejoy. All of these things are perceived as a threat to the safe, privileged spaces of their own hard-won family lives, which, though not well shrouded in material comforts, are still evidently safe and secure, in marked contrast to the scratched-out, cobbled-together spaces inhabited by Lovejoy. The negligent, cruelly disinterested Mrs Mason abandons her in a way that is tantamount to the sort of exposure more often seen in folklore. She slowly orphanises the girl, leaving her in a humiliating limbo that soon spirals out of control, where she goes from being completely unseen and overlooked, to being placed under a brutal public spotlight, and then removed from sight altogether to begin a joyless half-life behind the walls of the local church-run

orphanage. Her entrance into it sees her smothered by a system that leaves no room for any of the small signifiers of individuality or human dignity that she had so carefully gathered to herself up until this point: outgrown but clean and well-mended clothing, Tip's friendship, her prayerful connection to the statue of the Virgin Mary, and her beloved miniature rose.⁵²

The other forms of mothering seen in the novel are at a significant remove from Lovejoy's and represent very different forms of substitutive care. Angela the 'avenging angel' is reminiscent of the 'wicked stepmother' who will tolerate no divergence from her own plans and prioritises maintenance of the existing sociocultural orders; she symbolises the rigidities and deficiencies of the law but also the many failings of policy. Olivia represents a more compassionate approach, using the law of equity (in the form of a trust) to enable a protective, compassionate framework of substitute care for the foundling Lovejoy. She is almost, but not quite the classic fairy godmother, as she cannot magically solve all of the girl's problems, but she makes a very good stab at it, highlighting just how ineffective and disinterested the systems of state, church, and organised philanthropy can be.

Property rights, and the need to ration scarce resources, as ever, are central to the story, with such things as 'good garden earth' symbolising the scarce, safe, place in which identity and kinships can be developed and protected against displacement, or state interference. The hoped-for, presumed epilogue reunion with her beloved friend Tip—representing the ties of family and home—is sadly never seen and we are left to wonder and hope if it will someday happen. Justice eventually unfolds, but not via the workings of the court, criminal justice system, or social services; rather, the downfall and comeuppance of the 'wicked stepmother' Angela is brought about by Olivia's best-interests-led intervention. She has been guided throughout by the voice of the child, and actually leaves the safety of her own home and society to gather evidence and view up close the small, dangerous spaces occupied by the at-risk Lovejoy. Such was the girl's otherness and exile that she had to at times become even more visibly delinquent than she already was, simply to enable her survival: punching a younger, smaller child, shoplifting needed items, stealing from the church collection box, and trespassing upon derelict

⁵² Names and re-naming, matter, as ever. That she misnames it *Jiminy Cricket* is telling, calling to mind a conscience-ticking companion, the 'talking cricket' character of Collodi's *The Adventures of Pinocchio* (1883), who, like the statue of Mary that had often guided or 'advised' Lovejoy, is broken into pieces when the main character throws something at it in anger (his subsequent ghost form, notwithstanding). The miniature rose's official name was *Little Monarch*; it could be argued that Lovejoy—and her society—is less in need of an ancient system than they are of a conscience-provoking entity. Renaming is significant as Chapter 5 discusses more fully.

ground that 'belonged' to a local gang of boys.⁵³ And yet, she is safer in these 'dangerous' spaces than she would have been in the protective confines of the church-run orphanage, where she must set aside her beliefs, freedom, dress-sense, and kinships. Her original home—the rented room she shared with her mother—had dangers too, that were clearly hinted at, but perhaps too dark to be spelt out in children's literature of the 1950s. Factors such as poverty, neglect, poor housing, and social exclusion clearly impact profoundly upon family life rights and the rights of the child to be protected from harm.

Deep stigma attaches to abandonment, casting a long shadow across generations. The carceral nature of this 'care' system—whether workhouse, orphanage, residential or industrial school—is made very clear here as are the failings of the state, church, and society. As with *Jane Eyre*, the othering and abuse of Lovejoy sees her also dehumanised or rendered nameless at several points in the story. She is called 'a little varmint,'⁵⁴ by the local priest, and 'a big girl' when she is in reality anything but. She inverts the earlier, Romantic stereotype of the female foundling who is usually viewed with some degree of compassion or sentimentality rather than communal scorn. She defies expectations by managing to carve out of the rubble a tiny garden that represents everything that is missing from her own inadequate, harm-filled home life, lavishing on it all the care and attention that she was denied. She is a surplus child in every sense, with uncertain ancestry, via an absent mother, and no mention of a father. Her community is impoverished and at times makes brutal decisions: she is abandoned again by the people she is lodging with, her quasi-carers, when they can no longer afford to keep her. Those who might have perhaps been able to take her in (Tip Malone's mother) refuse to do so, closing the door in her face, so that she can only be 'rescued' by accident, and placed into the care of the church.

In many ways she takes on the characteristics of the more fear-inducing male foundling or orphan, demonstrating a stoic, hard-working nature. Though dishonest, she does confess to and atone for her misdemeanours. It is noteworthy that many of the family life violations described in recent reports (in the UK and Ireland, discussed in Chapter 5) were occurring in places much like the one we see, briefly, through Lovejoy's eyes, within the same time period. In the small garden, she behaves almost like a boarded-out or trafficked child sent to work a farm, digging, fetching water, and handling

⁵³ She 'managed by stealing' as Angela observes. The objects that she takes are symbolic of home life and of childhood, small luxuries such as sweets and ice cream, ribbon for her hair and—in a nod to the opportunities missed out on at school—a pencil sharpener (p. 28). A literal safety net—taken from a child's pram—is also stolen by her, to protect her seedlings from birds. The irony should not be lost.

⁵⁴ *An Episode of Sparrows*, p. 26.

manure to care for her 'crops.' She was largely unseen by her Catford Street community (unless being scolded for some act of delinquency) but on being placed in the orphanage, her invisibility becomes punitive. A drab uniform confirms that her original identity will now be erased, so that she can enter the Home of Compassion.⁵⁵ Law's role here is to reinforce her otherness, while the system does its best to keep her unseen and unheard. She must be kept away from 'legitimate' families, represented by the Malones, who are, despite their 'shabbiness,' endowed with the benefits of kinship and familial loyalty. Vincent, her landlord, is the closest thing she has to a substitute parent or social worker, intervening on her behalf when her mother's neglect has crossed a line into dangerous parenting.⁵⁶ Olivia's intervention inverts the usual norms of familial duty, as she disinherits her own unworthy family members in favour of helping Lovejoy (and Vincent), using equity rather than common law as the means to do so, by carefully setting up a trust fund, and appointing kindly, interested trustees to run it.

Lovejoy has lived up to the darker mythologies and expectations of foundling tales—in that that they showcase the potential to usurp rightful heirs—though she never actively sought this outcome. We do not get to see how the terms of Olivia's trust play out in future, in this new substitute family that she has assembled for the girl's benefit, but the message seems to be that the law has many chronic inadequacies. This is so despite the burgeoning legislative framework aimed at child protection. The care system has many gaps, most of which Lovejoy has fallen through. Her orphanisation and otherness exemplify the effects of lingering prejudices that can easily stigmatise the vulnerable and worsen harms that they have already suffered. She is seen as irretrievably delinquent mainly by virtue of her behaviour but also through her lack of kinship ties. Her defiant nature is seen as deviant, in the sense that she is neither typically female nor normatively grateful, as foundlings and orphans are expected to be, for any small mercies shown to them, such as the provision of food, clothing, or shelter. The novel has much to say therefore

⁵⁵ This is in sharp contrast to Tip's uniform (he is sent off to train for the Navy, a punishment which, for him, is much more reward than sanction) which will visibly indicate that he has joined a respected community, held in high regard by society.

⁵⁶ The kindly Vincent, who gradually becomes a *de facto* foster parent to the neglected, abandoned girl, acts as a sort of social worker. He literally removes her from the freezing stairs outside the rented room she shares with her mother taking her to a 'place of safety' (the wording of the Children and Young Persons Act 1933 s.107 which would have then been in force). A dying Olivia considers adopting or fostering Lovejoy but is told in no uncertain terms by her sister Angela that 'old maids' are never permitted to adopt children (p. 257).

about social justice⁵⁷ and the state's failings in terms of achieving workable child protection systems. The most significant point, however, is perhaps that the fundamental concepts of home and family—and the rights frameworks meant to enable and protect them—can easily become so nebulous as to be almost entirely lost. Likewise, the spaces that we consider as 'home' cannot always be glibly assumed to be places of safety, just as a right to home life offers no guarantee that familial ties will either arise or remain intact. Harms caused by poverty, neglect and cruelty can easily seep into the sacred spaces of home and family life to undermine them, then as now, to turn vulnerable children into outcast others or render them surplus. Lovejoy is safest when her mother is no longer there to ignore or neglect her, and at her happiest when she is tending to the little proto garden hidden amongst church ruins, in the company and social kinship of her friend Tip. Olivia's compassion-led solution is grounded in principles of human dignity, serving as a prescient reminder that the voice of the child needs to be both heard and listened to. Having left the safety of her own homeplace—and by virtue of her own frailty and chronic exclusion from all things familial and social—she is able to see things from the child's eye perspective of the vulnerable Lovejoy, to offer an equitable solution that allows for the promotion and protection of family life without sacrificing important aspects of the child's right to identity and well-being. She follows the Dickensian tradition (*Oliver Twist*, *Great Expectations*) of having kindly 'old bachelors solve the problem.'⁵⁸ Angela, 'the lawmaker,' must adhere to the rules on child protection and sanction, even where (as she eventually comes to realise) these do not result in fair or just outcomes. Her harsh model of rescue would see Lovejoy further stigmatised, via an enhanced form of orphanisation that involves high-walled segregation from the rest of society, to reinforce the mandated invisibility of those who have somehow transgressed, whether through birth or circumstance. She is likely to become even more othered in the process. Enforced uniformities in terms of plain, modest dress, overly devout spiritual beliefs, and conformist behaviours, recall the fatal regime of Lowood (*Jane Eyre*) and presage the trappings of fundamentalist, dystopian Gilead (*The Handmaid's Tale*, *The Testaments*).⁵⁹ The

⁵⁷ Diver A 'Equity, Altruism, and the Voice of the Child in *An Episode of Sparrows*: Perennial Issues of Youth Justice and Child Protection' *Children's Literature Association Quarterly* (2021) 46 (4), pp. 357–378, where I argue that even yet (as The Redgrave Report (2021: 3) observed) there are perennial, systemic 'blind spot[s]' in dealing with extremely vulnerable children and young persons.

⁵⁸ Parker, David, 'Oliver Twist and the Fugitive Family' *Dickens Studies Annual* (2000) 29, pp. 41–59, p. 53.

⁵⁹ The 'consistency' of Brocklehurst's regime is mirrored by the 'sameness' of Lowry's sedated, barely human village in *The Giver* (1993). Even the relentlessly cheery Anne (*Anne of Green Gables*) is initially forbidden from having fashionable clothing, given what it might represent in terms of non-conformity with her new family.

dark realities of institutionalised, substitute caregiving as represented in these works can easily deform the contours of home and family life rights, leaving little room for the protection of the vulnerable, parentless child.

4.4 Legal Frameworks: A Right to Avoid Otherness?

Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

—Universal Declaration of Human Rights (1948) Article 25 (2)

The themes of invisibility and voicelessness in *An Episode of Sparrows* sit particularly well with the human rights law discourses of the time, with a freshly drafted European Convention on Human Rights (1950) ('ECHR') waiting to make itself useful within the realms of home, family, and private life. This era managed however to cling to and utilise the earlier legal and literary traditions of the feared other and the stains of illegitimacy (not to mention fallen womanhood) to bring about the sort of dehumanising abuses, atrocities, and long silences that would later warrant Church and Government Inquiries into human rights violations (as discussed in Chapter 5). A wide range of international law instruments are relevant to adoption and orphanhood—despite being roundly ignored at times—in addition to the ECHR. These include: The United Nations Charter (1948); The Universal Declaration of Human Rights (1948) ('UDHR'); The International Covenant on Civil and Political Rights (1966) ('ICCPR'); The International Covenant on Economic, Social, and Cultural Rights (1966) ('ICESCR'); and The UN Convention on the Rights of the Child (1989) ('CRC'). Common to all of these is the underpinning duty upon signatory states to protect 'the dignity and worth of the human person.'⁶⁰ That no one should face discrimination based on birth status, is made very clear in Article 2 of the UDHR.⁶¹ The concept of the family unit merits protection too, with Article

⁶⁰ See, e.g., The Preamble and Article 1 of the UDHR. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

⁶¹ 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, *birth or other status*. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.' UDHR, Article 2 (Emphasis added). Article 7 reaffirms that 'All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal

16 (3) of the UDHR setting out that '...the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.' The right to a nationality and—crucially for many adoptees—to not be deprived of nationality, is contained in Article 15.⁶² Subsequent human rights instruments generally echo the wording and spirit of the adult-centric (and matrimony-promoting) UDHR, reiterating the fundamental nature of certain entitlements.⁶³ The 1967 European Convention on the Adoption of Children (revised 2008) is relevant to the making of adoption orders by signatory states, highlighting the need—in certain circumstances—to permanently sever original ties between birth parent and child. Article 20 (1) states that 'Provision shall be made to enable an adoption to be completed without disclosing to the child's family the identity of the adopter.' The revised 2008 Convention, Article 22 (1), confirms however that 'Provision *may* be made to enable an adoption to be completed without disclosing the identity of the adopter to the child's family of origin (emphasis added).' This perhaps indicates a softening of attitudes on the issues of contact and reunion.

The focus on secrecy has shifted away from the archaic notion that adoptees must be protected from the stigma or knowledge of their own illegitimacy or abandonment, replaced by a pragmatic need for child protective practices, grounded in the best interests of the child, via the welfare paramountcy principle. The UNCRC (1989) has enshrined this principle (in Article 3), by making the best interests of the child '*a* primary consideration' (unfortunately not *the* primary consideration) when decisions concern children. The terminology can allow for a degree of rights-balancing by domestic decision-makers, rather than enshrining the child's best interests as completely inviolable.⁶⁴ As Hammarberg (2008) noted however,

On family issues such as parental visitation, foster placement and adoption, the interests of the child, however, will be *the* paramount consideration, as made clear in the substantive articles of the Convention as well as in earlier standards.

protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.'

⁶² There is also a right to not have to suffer 'attacks' upon one's 'honour and reputation' (Article 12). The preservation of social respectability, as ever, seems to be a key concern.

⁶³ Article 1 of the Charter of Fundamental Rights of the European Union (2000) states that "Human dignity is inviolable. It must be respected and protected." See also Article 7 on the 'right to respect for private and family life, home and communications.'

⁶⁴ As noted by the Australian Human Rights Commission '*Human Rights Brief No.1*', <https://humanrights.gov.au/our-work/human-rights-brief-no-1>. Domestic legislation can offset this by making best interests the paramount consideration, see further <https://www.alrc.gov.au/publication/seen-and-heard-priority-for-children-in-the-legal-process-alrc-report-84/16-childrens-involvement-in-family-law-proceedings/the-best-interests-principle/>.

The 1979 Convention on the Elimination of All Forms of Discrimination against Women, for instance, states in relation to family education that the best interests of the child should be ‘the primordial consideration’ (Art. 5.b); and in relation to guardianship, that the child’s interests should be ‘paramount’ (Art. 16). The Convention on the Rights of the Child does not, of course, dilute those standards (emphasis added).⁶⁵

Article 3 UNCRC, therefore, applies to the decisions being made by

...executive authorities, law-makers (parliaments) and judicial bodies. It applies to all actions by these authorities as well as by relevant private institutions. Importantly, it also concerns ‘children’ in the plural. The Committee on the Rights of the Child has interpreted this wording to mean that the article is applicable in both individual cases and in relation to groups of children or children in general – which makes it even more relevant in political and policy terms.⁶⁶

All of this is relevant to those at risk of being deprived of origin via orphanisation: Article 8 UNCRC enshrines the duty upon signatory states to preserve the child’s natal identity where possible, including in its remit nationality, name, and family relations, and the right to re-establish identity, if this has been lost or removed. Article 21 specifically provides that the best interests of the child ‘shall be the paramount consideration’ in adoption matters. Article 7 (1) requires children to be registered immediately after birth and gives them ‘the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.’ This does not guarantee that any given name will indicate, preserve, or protect connections to genetic ancestry, nor does it suggest that a nationality, acquired or presumed, will always necessarily reflect the truths of such identity-significant things as birthplace, or country of origin, ethnicity or culture.⁶⁷ Article 9 (1) does, however, oblige States Parties to ensure that

a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the

⁶⁵ Hammarberg, Thomas, (Commissioner for Human Rights Council of Europe) ‘*The Principle of the Best Interests of the Child – What it Means and What it Demands From Adults*’ (Lecture), 30 May, 2008 (Warsaw) CommDH/Speech (2008) 10. <https://rm.coe.int/16806da95d>.

⁶⁶ Ibid.

⁶⁷ As seen recently, citizenship and nationality can also be lost later in life. Tammy, Kim, E., ‘Adoptees Have the Same Right to Citizenship as Biological Children’ *New York Times* (September 2021). <https://www.nytimes.com/2021/09/23/opinion/adoption-immigration-korea.html>.

best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

The UNCRC is persuasive in effect rather than binding, apart from where its provisions have been incorporated into—or closely mirrored by—domestic legislation (as with the welfare principle in the UK).⁶⁸ Enforcement mechanisms can sometimes be lacking or limited by many factors, such as poverty, famine, armed conflict, austerity measures, or global pandemic.⁶⁹ Defining the best interests of individual children is also profoundly difficult. As The Parliamentary Assembly of the Council of Europe (2018) noted,

It is sometimes easier to say what is not in the best interests of children, for example coming to serious harm at the hands of their parents or being removed from their family without good cause.⁷⁰

To further complicate matters, in respect of international human rights law relating specifically to the topic of adoption, it seems that 'some signatory States simply fail to abide by the terms of the instruments' (O'Halloran 2018).⁷¹ At the level of national practices, key 'principles relating to improper costs, respect for cultural background and trafficking are regularly abused.'⁷² And yet the governing principles for domestic lawmakers in many jurisdictions derive directly from the international law frameworks outlined above (together with The Hague Convention 1993, and the European Convention on the Adoption of Children 2008, which co-regulate international adoptions).⁷³ The child welfare paramountcy principle (Article 21, UNCRC) is meant to serve as 'a general benchmark' for decisions involving the upbringing of children. It seems at times to have become a means of 'pass-
porting children from the public care system into the adoption process' at

⁶⁸ See, e.g., Sect. 3 of The Children Act 1989, and article 3 of The Children (NI) Order 1995, and their attendant welfare checklists. Moreover, there is the presumption that parliament will not enact legislation that conflicts with the government's obligations under international law.

⁶⁹ See further Diver, Alice, *A Law of Blood-ties: The 'Right' to Access Genetic Ancestry* (2014) Springer: London, Chapter 4 on UN Committee Guidance.

⁷⁰ Parliamentary Assembly of the Council of Europe Resolution 2232 (2018) '*Striking a Balance Between the Best Interest of The Child and the Need to Keep Families Together*'. <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25014&lang=en>.

⁷¹ O'Halloran, Kerry, *Adoption and Human Rights: International Perspectives* (2018) Routledge: London, p. 307.

⁷² Ibid., p. 308.

⁷³ Ibid., p. 308.

the expense of other potential options such as special guardianship or long-term fostering.⁷⁴ Orphanisation continues to occur, as do permanent losses of origin. This may be especially so where adoptions are associated with the sort of traditional rescue narrative that encourages or requires severance from one's place or family of origin. Moreover, if adoption is being used as a means of addressing infertility—as with surrogacy and gamete donation—then certain secrecies and stigmas might still arise. The concept of illegitimacy is less likely to spark the sort of shame or shaming that once demanded lifelong silences⁷⁵ (via sealed or falsified birth records) but other profound markers of difference may still occur, in the form of rights infringements that can embed an indelible otherness: forced relinquishment, and vetoes or legal bars on accessing original information or contacting one's birth relatives.

While reunions with genetic relatives are generally no longer frowned upon or seen as largely the preserve of folklore or fable, there are still some problematic aspects to them, despite the growing tendency for greater openness in adoption in many places. Increasingly, adoptees are being permitted access to their original adoption or birth records, and open adoptions—in theory at least—are meant to allow for some degree of contact between estranged birth relatives.⁷⁶ Article 8 (2) of the European Convention ('ECHR') is a key provision here, frequently cited in both domestic UK and Strasbourg (ECtHR) cases that involve issues of genetic identity, contested adoptions, access to birth records, or contact with relatives post-adoption.⁷⁷ Under its wide, sometimes vague, auspices, the right to home, family and private life

⁷⁴ Ibid., 309.

⁷⁵ See further Singley's seminal account of informal, openly practised adoption processes in the United States Singley, Carol J., *Adopting America: Childhood, Kinship, and National Identity in Literature* (2011) Oxford University Press: Oxford, which sets out how, by the mid-twentieth century, adoption had generally become 'a well-maintained secret, at times hidden even from the adoptee.' See also Singley, Carol J., 'Teaching American Literature: The Centrality of Adoption' *Modern Language Studies* (2004) 34 (1/2), pp. 76–83, p. 77, on 'personal, familial, and national identity, including the longing for lost origins; the embrace of new beginnings; and the interplay of competing loyalties to self and others.'

⁷⁶ Barnett-Jones Beverley and Manning Cliff, *Modernising Post-Adoption Contact: Findings From a Recent Consultation* (2021) Nuffield Family Justice Observatory (NFJO), which found for example that 'Some adoptees told us that they had not known that their birth parents had been forbidden to say 'I love you' in their letters until they had reconnected as adults. Some adopters told us that they had wanted to share more truth about their child's presenting issues but had been advised against doing so for fear of distressing the birth family and/or being seen as failing' (p. 5).

⁷⁷ The Human Rights Act 1998 incorporated much of the ECHR into the UK's domestic law, making its provisions binding rather than persuasive. Chapter 5 discusses the UK's recent government Inquiry (*The Right to Family Life: Adoption of Children of Unmarried Women 1949–1976*) which looked at forced adoptions in England and Wales and the violation of family life (rather than family life *rights*, notably). An apology has not been forthcoming, despite government acknowledgement of the harms suffered by mothers and adoptees.

is a highly qualified one.⁷⁸ Article 8 (2) permits interferences with home, family, and private life rights in certain circumstances:

There shall be no interference by a public authority with the exercise of this right except such as 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.⁷⁹

It is hardly surprising therefore that 'one of the most dynamic and divisive areas of ECHR jurisprudence [is] the protection of family rights.'⁸⁰ Adoption-relevant case law is also frequently prone to controversy, with high emotivity, offering sharp reminders of adoption's problematic history.⁸¹ Current issues of concern include the speed or ease with which parental consent to adoption can be dispensed with by domestic courts,⁸² and the way

⁷⁸ Not least because of the delineating phrase 'right to *respect for*' (rather than a more straightforward '*right to*') home, family, and private life (Article 8 (1)).

⁷⁹ The wording of Article 8 ECHR can be problematic: having respect for someone's right to family life clearly differs from being under a juridical obligation to *actively* take positive steps to realise, protect, or promote that right, and indeed their right to identity, if it is resting upon the presence or absence of a familial connection. The notion of respect also suggests an agenda of passive non-interference, rather than a binding duty to endorse or actively assist with the maintenance or repair of less obvious bonds of kinship, or to help with identifying or contacting genetic relatives.

⁸⁰ Draghici, Carmen, '*The Legitimacy of Family Rights in Strasbourg Case Law: Living Instrument or Extinguished Sovereignty?*' (2017) Bloomsbury: Oxford p. 1.

⁸¹ See further Deblasio, Lisa Marie, 'Hiding Behind the Law? A Critique of the Law and Practice under the Adoption and Children Act 2002' *Plymouth Law and Criminal Justice Review* (2014) 6, pp. 148–172, who argues that in practice, there is significant reliance upon legal fictions 'and a disregard of flaws within the system, which not only contravenes any rights retained by birth parents, but creates legal voids for children, which conflict directly with the paramountcy principle.' p. 148; Hill, Amelia, 'Adoption a 'runaway train' often breaching rights of birth parents' *The Guardian* (2018) on how the UK 'has the highest number of adoptions in Europe and is one of just three EU countries that allow forced or non-consensual adoptions – where children are adopted against the wishes of their birth parents..[it is] the only country in Europe to have a uniform rule forbidding any direct contact between adopted children and their birth and foster families.' <https://www.theguardian.com/society/2018/jan/18/adoption-has-become-runaway-train-social-workers-cannot-stop> (accessed 30 July 2023); Thornberry Hugh, 'Forced adoption' criticism shouldn't get in the way of helping children' *Community Care* (2016) <https://www.communitycare.co.uk/2016/03/09/policy-changed-forced-adoption-criticism/> (accessed 1 January 2023).

⁸² See further Featherstone Brid and Gupta Anna, '*The Role of The Social Worker in Adoption – Ethics and Human Rights: An Enquiry*' (2016) British Association of Social Workers (BASW) on how 'in recent decades, policy makers had tended to promote adoption as risk free in a 'happy ever after' narrative....' This is despite the frequent 'silencing of adopted children and adults who may have to manage contradictory emotions such as grief and loss, joy and happiness [and] birth families being unable to articulate their losses and feelings of shame and sadness.' <https://www.basw.co.uk/media/news/2018/jan/basw-unveils-adoption-enquiry-report-and-key-findings> (accessed 12 July 2023). See also the BASW Response (2018) https://www.basw.co.uk/system/files/resources/basw_55744-7.pdf (accessed 12 July 2023).

in which post-adoption contact can be severely proscribed—if not banned altogether—as seen in some recent UK cases.⁸³

In terms of contentious decisions, the High Court for England and Wales held recently in *Seddon v Oldham MBC (Adoption Human Rights)* (2015)⁸⁴ that the making of an adoption order ‘always brings pre-existing Art. 8 (ECHR) rights as between a birth parent and an adopted child to an end.’⁸⁵ The facts of *Seddon* are, briefly, as follows: the child’s (birth) mother, having repeatedly contested the making of the adoption order, then sought the court’s permission to make an application for contact, post-adoption.⁸⁶ The court interpreted her efforts as a failure on her part to grasp and accept that she was no longer legally the child’s mother. It was stressed that an adoption order ends any pre-existing Article 8 rights on the basis that these rights must be grounded in the presence of a substantial, existing familial relationship between parent and child (Roagna 2012).⁸⁷ An infant removed at birth or shortly thereafter would not fall within the category of having enjoyed such a relationship with their genetic parent: biological connection alone is insufficient to give rise to Article 8’s protections, at least in this context.⁸⁸ It might, however, allow for some ‘new’ type of right to arise, which could in turn potentially allow for some degree of contact to occur, once—or if—the court has granted permission for this.⁸⁹ Several aspects of this case are, therefore, significant: the court stressed that the ‘transplant model’ of adoption still prevails and that adoption plainly brings about a ‘change intended to be permanent....’⁹⁰ Such reasoning does little to support the notion of a meaningful right to access one’s origins or ascertain genetic identity.⁹¹ It similarly

⁸³ See, e.g., *Re Z (A Minor: Freeing for Adoption)* (2022) NI Fam 1; *R. and H. v. the United Kingdom*, (2011) no. 35348/06; *In the Matter of TM and RM (Freeing)* [2010] NI Fam 23; *Re W (An Infant)* [1971] 2 AER 49; *Re C (a minor) (Adoption: Parental Agreement, Contact)* [1993] 2 FLR 260; and *Down and Lisburn Trust v H and R* [2006] UKHL 36, with particular reference to the Dissenting Opinion of Baroness Hale (now Lady Hale).

⁸⁴ *Seddon v Oldham MBC (Adoption Human Rights)* [2015] EWHC 2609 (Fam).

⁸⁵ Hollis, *op. cit.*

⁸⁶ *Ibid.* The statutory requirement that birth parents must firstly apply for the court’s permission to bring contact proceedings is arguably not compatible with Article 8’s provisions.

⁸⁷ Roagna, Ivana, ‘Protecting the Right to Respect for Private and Family Life Under the European Convention on Human Rights’ (2012) Council of Europe, p. 30, https://www.echr.coe.int/documents/d/echr/Roagna2012_EN.

⁸⁸ See however *Anayo v Germany* [2010] EHRR (Application no. 20578/07) and the Dissent in *Odièvre v France* [2003] 1 FCR 621 (Application no. 42326/98).

⁸⁹ The court stressed that the ‘as if born to’ paradigm still held sway in this jurisdiction, via s.67 of the Adoption and Children Act 2002 (‘ACA’) (para 31). See also *B (a Child), Re* [2013] UKSC 33 (12 June 2013).

⁹⁰ Para 34, citing *In Re B (Adoption: Jurisdiction to Set Aside)* (1995) Fam 239 per Simon Brown LJ.

⁹¹ Adoptees in England and Wales have been able generally to obtain their original birth certificate at age 18, since the mid-1970s; see further The Children Act 1975, and The Adoption Act 1976.

does not aid the argument that a right to post-adoption contact might be adequately protected under Article 8 ECHR. The contention that the right to respect for family life can arise from birth by virtue of biological connection, similarly, does not sit well with certain Strasbourg decisions (such as, for example, *Kearns v France* (2008)).⁹²

However, if Article 8 family life rights can be *extinguished* via the making of an adoption order—or by a mother providing formal consent to relinquishment as was the case in *I.S. v Germany* (2014)⁹³—then this suggests that certain fundamental family life rights *are* clearly extant from birth, even if only briefly. If so, then it may be possible to argue that other corollary losses (of identity, culture, nationality, or ethnicity) can flow from the loss of family life and should be seen as falling within the scope of Article 8's protective remit. The law cannot conjure into existence familial feelings of regard or affection where none exist—nor should anyone be forced into parenthood or parenting against their will—but courts and legislators could at least promote a right to access accurate information on one's *parentage*. This should encompass an authentic account of original identity, so that orphanisation could be a highly exceptional rather than normative occurrence. Jurisdictions that have a long history of forced adoptions, domestic and international, should perhaps be particularly mindful of the need to avoid a repetition of anything that seems to resemble past injustices or human rights abuses. As Hollis (2015) has argued, the Strasbourg Court's decision in *I.S. v Germany* (2014) was a significant one, though it did not seem to have been clearly factored into the High Court's reasoning in *Seddon*, above.⁹⁴ Here, a mother surrendered her newborn twins on the basis of assurances from social workers that a so-called half-open adoption was possible, so that she would receive updates on—and some measure of contact with—the children. The German courts had not respected this arrangement, however. The infants had been rejected before birth by their putative father, by members of the mother's birth family, and by their mother's husband, on the basis that they were illegitimate, having

⁹² EHCR Application no. 35991/04.

⁹³ EHCR Application no. 31021/08.

⁹⁴ HH Hollis, Keith 'Does Article 8 Survive Adoption?' *UK Human Rights Blog* (2015). <https://ukhumanrightsblog.com/2015/10/06/does-article-8-survive-adoption/>.

been conceived during an extramarital affair.⁹⁵ The court noted that the relationship between the birth mother and her children did fall within the remit of Article 8, constituting family life, albeit briefly.⁹⁶ Their connection ceased to count as family life under the European Convention however once she had signed the so-called deed evidencing her consent to their being placed for adoption. By doing so, the court held that *she*—rather than the state—had intentionally severed their familial relationship, ending her motherhood, and orphanising the children, so that they might be freed for adoption by new parents. It was also suggested that the

...biological kinship between a natural parent and a child alone, without any further legal or factual elements indicating the existence of a close personal relationship, *might be* insufficient to attract the protection of Article 8. (emphasis added)⁹⁷

By the same token, genetic kinship alone might arguably fall within Article 8's remit, even if only exceptionally and infrequently. This was seen in *Anayo v Germany* (2010) where the biological father's commitment to an 'intended family life'—together with his children's best interests-led need for access to their identity—served to persuade the court to grant him 'exceptional' permission to apply for contact with them. In *I.S. v Germany* however, it was held that any 'remaining or newly established rights' that might be present, even those that did not usually fall within the recognised scope of Article 8's family life protections, still constituted 'an important part of the applicant's identity as a biological mother.' They, therefore, fitted within the concept of 'private life' under Article 8. In other words, this aspect of her private life had not been afforded sufficient respect by the German authorities.⁹⁸ Such reasoning clearly acknowledges that there is some scope under Article 8 for

⁹⁵ *I.S. v Germany* (2014), *op. cit.* n. Significantly, it was noted that the adoptive parents had at first hesitated to tell the children that they were adopted: they had also apparently been planning to write a letter to the birth mother but had held back from doing so due to feelings of insecurity caused by the commencement of the court proceedings (para 32). It was noted too at the Appeal stage that the German Civil Code provided that when an adoption takes effect, the relationship of the child 'and its descendants to its previous relatives and the rights and duties arising from this are extinguished.' The Civil Code similarly did not recognise 'half open' or open adoptions.

⁹⁶ *Ibid.* at para 68.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.* It was held that 'the applicant could not be granted contact, as she had not created a significant social and family relationship with the children. The time of pregnancy and the two weeks after the birth did not suffice. The Civil Code *grants to the adoptive parents the sole right to establish, grant or deny contact with the children even in respect of the natural mother.* Furthermore, the court argued that the children, who were only three years old, might be overwhelmed by the fact that they had two mothers' (at para 33, emphasis added).

the recognition, if not the active protection, of biological connections that are underpinned by an intention to form significant familial ties.⁹⁹

That said, certain controversial cases have cast a long shadow within this area of law,¹⁰⁰ demonstrating that family life rights can at times be very fragile things, easily lost, removed, or deemed non-existent. On the issue of human rights influencing domestic proceedings, The Court of Appeal (England and Wales) in *Re B-S (Children)* [2013]¹⁰¹ did use unequivocally 'strong language' over the lower courts' apparent 'inattention to Human Rights in care and adoption proceedings.'¹⁰² As Downs (2013) summarises, the court called for close scrutiny of such cases on appeal to reach the level of 'audit,' given the

'...recurrent inadequacy of the analysis and reasoning placed before Courts in support of adoption by Children's Guardians and Local Authorities but also, "in too many judgments." With reference to the anodyne and inadequate material served up as analysis in many such cases it adds, "This sloppy practice must stop. It is simply unacceptable in a forensic context where the issues are so grave and the stakes, for both child and parent, so high."¹⁰³

On this note, a recent Court of Appeal case (England and Wales) merits mention. In *Re B (Adequacy of Reasons)* (2022)¹⁰⁴ the court allowed an appeal against Care and Placement for Adoption orders, on the basis that the judge in the lower court had not correctly engaged with the oral evidence. The lower

⁹⁹ Ibid. The court reiterated that while the 'essential object' of Article 8 was the protection of the individual against arbitrary interferences by the State, this does not merely oblige the State refrain from such interference.

Positive obligations arise too, via the duty to respect private or family life. However, 'the boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition.'

Moreover, 'regard must be had to the fair balance which has to be struck between the general interest and the interests of the individual' (para 70).

¹⁰⁰ See, e.g., *Kearns v France* [2008] (Application no. 35991/04); *Webster (the Parents) v Norfolk County Council* [2009] EWCA Civ 59, and the useful summary Press Assoc., 'Couple vow to fight adoption 'miscarriage of justice' *The Guardian* (2009) <https://www.theguardian.com/society/2009/feb/12/child-adoption-appeal-court-ruling>.

¹⁰¹ EWCA Civ 1146; See also *In re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33.

¹⁰² Downs, Martin, 'When Adoption Without Parental Consent Breaches Human Rights', UK Human Rights Blog (2013) <https://ukhumanrightsblog.com/2013/10/01/when-adoption-without-consent-breaches-human-rights/> adding that 'The Family courts [had] been bracing themselves for this Judgment since McFarlane LJ gave permission to appeal on 14 June 2013 (*Re B-S (Children)* [2013] EWCA Civ 813) and deployed the phrase audit to describe the kind of scrutiny of human rights issues required in public law family cases since *In re B*.'

¹⁰³ Ibid.

¹⁰⁴ EWCA Civ 407.

court's analysis had also been 'too linear,' wrongfully discounting the evidence of the birth parents, who—though they had been assessed as presenting a continuing risk to the child—had made some progress in terms of changing their ways, whilst their child was in foster care. The court stressed the need to identify adequately the grounds upon which the statutory threshold for the making of a Care order ('significant harm') had been reached. The lower court's reliance upon written rather than verbal evidence was also interesting: the testimonies of the social worker and guardian were only glancingly dealt with (at a paragraph each) while the parents' oral accounts had been condensed into a single sentence. Positive changes that the parents had made to their lifestyle were referred to in the psychologist's evidence but had not been factored into the judicial analysis. The question of whether such changes were sufficient to lessen the risks to the child was a key consideration here. This meant that the court's analysis was flawed, having focussed only on negative factors. The judge had also erred in his discounting of family rehabilitation after having firstly identified it as a realistic option; such a selective 'pruning' of the available options did not allow for the required 'holistic evaluation' of all the workable options, and therefore amounted to a significant, procedural irregularity.¹⁰⁵ Such reasoning could represent a slight move away from the rights-balancing model which has repeatedly and worryingly highlighted the 'peculiar finalities' of adoption. A processual approach might allow for greater inclusion of those who tend to lack voice: if so then this is a welcome development. The findings of Featherstone and Gupta (2016) reiterate however that lingering shame, stigma, and fear can still often be associated with adoption and its various processes and customs. As ever, the sharing of testimony—and having it heard—matters:

'A number of adopted people stated that, no matter how well the adoption had turned out, there were deep-seated feelings of fear, rejection and abandonment. One person described it as: 'the adoption feeling'. The provision of safe spaces, such as support groups, where adopted people could explore their emotions, and have these validated, was considered very important.'¹⁰⁶

¹⁰⁵ Jackson LJ (at para 59) offers a workable template, suggesting that courts include background facts, and identify the core issues prior to deciding on the relevant legal tests. The important aspects of verbal and written evidence must be highlighted in advance, with evidence evaluated as whole and weightings clarified. Explanation should be given for the decision reached.

¹⁰⁶ Featherstone and Gupta, *op. cit.*

4.5 Conclusion

A child's circumstances may 'require' statutory intervention, perhaps may even 'require' the indefinite or long-term removal of the child from the family and his or her placement with strangers, but that is not to say that the same circumstances will necessarily 'require' that the child be adopted. They may or they may not. The question, at the end of the day, is whether what is 'required' is adoption."

—Wall LJ in *Re P (Placement Orders: Parental Consent)* [2008] EWCA Civ 535, [2008] 2 FLR 625 (para 126)

As in many of the 'golden age' narratives on orphan rescue and altruistic adoption, the laws and policies on accessing origins still tend to present as having numerous overlapping, intersecting 'lines demarcating social exclusion and inclusion.'¹⁰⁷ A distinct sense of otherness can still very easily attach to having been relinquished by—or removed from—one's family of origin. This may be so even where there have been moves away from the '*as if born to*' model of adoption, which traditionally tended to favour secrecy, the 'transplanting' of children, and the permanent closure of birth records. Despite the current emphasis on openness in many jurisdictions, legal barriers to kin contact can be easily imposed if these are needed to protect the best interests of the child, bolster new family autonomy, or reassure nervous adoptive parents. Certain obstacles can still hinder or completely negate the prospect of reunion later in life, perhaps leading to a permanent othering of the adoptee, or the demonisation of the parent (s) who relinquished them, consensually or otherwise.¹⁰⁸

The ECtHR has confirmed that 'it is in the very nature of adoption that no real prospects of rehabilitation or family reunification exist.'¹⁰⁹ While this might not necessarily be interpreted as meaning that reunions should never occur, it is suggestive of a deep schism being created, and which is not designed to be temporary. This may leave very little scope for family contact to occur. As Loibl (2022) has stressed, 'severing family ties entails

¹⁰⁷ Singley (2004), *op. cit.*, p. 82.

¹⁰⁸ See further however *Paradiso and Campanelli v Italy* ECHR [2017] (Application no. 25358/12), a surrogacy case involving Article 8 ECHR in which the absence of genetic connection seems to have been a significant factor in the Strasbourg Court's decision to remove the commissioned child from his prospective adoptive parents (who had by that stage been raising him for 8 months). Italy's aim of banning commercial surrogacy—via criminalisation—was key here. The placing of the child into the care system— orphanising him—seems a disproportionate response and not entirely in keeping with other decisions such as, for example, *Mennesson v France* ECHR [2014] (Application no. 65192/11).

¹⁰⁹ *Strand Lobben and Others v. Norway* [2019] (Application no. 37283/13) at para 206.

cutting a child off from their roots.’ States should, therefore, be very mindful of their Article 8 obligations to reunify families where possible, and ‘make sure that everything is done to preserve and, if appropriate, rebuild family relations.’¹¹⁰ Draghici (2017) has similarly argued that signatory states to the European Convention must now, where at all possible, ‘act in such a way as to preserve and develop family ties.’¹¹¹ The complex nature of such concepts as family life, substitutive parenting, and the best interests of the child seems likely to ensure that litigation will continue to arise from contested adoptions and applications for contact between birth relatives. Otherness is no longer the preserve of the adoptee, orphan or foundling; birth parents—and other estranged relatives such as siblings or grandparents—are facing similar challenges, in terms of finding themselves often excluded from the protective remit of family life rights. The various orphan rescue narratives discussed in this chapter offer useful reminders, however, of the inherent dangers of childhood, especially where children might have been neglected or abused, commodified, unheard, or ‘transplanted’ away from their origins. The novels depict acute and chronic inadequacies, on the part of birth and adoptive families, society, and the state, which often turns a blind to systemic failings and risks. The orphaned or orphanised children in the novels have every variety of familial relationship, original and substitutive, with parenting ranging from good to dangerous or cruelly neglectful. It is not difficult to see why law and policy—and the frameworks for human rights protections—struggle to ‘manage’ family life and oversee the safe passage of vulnerable children.

The use of the garden—as symbolic of an alternative space for home or family life—is twofold. It can represent a better, safer version, where kind strangers—or supernatural creatures—act as kinfolk or benefactors, constructing shelters for those who have been lost, exposed, or left behind, through thoughtlessness or rejection. Conversely, they can call to mind the dangerous woods and dark forests of folkloric adventures, where infants and children must fend for themselves or figure out some way of escaping or of returning home to their family, heritage, or rightful place in society. Such spaces may be quite lawless or indeed subject to a litany of customs, rules, and regulations—*de facto* laws and policies—which set out how these places

¹¹⁰ Loibl, Elvira, ‘*Abdi Ibrahim v. Norway*: A New Zeitgeist regarding (Intercultural) Adoptions at the ECtHR’ (2022) *Strasbourg Observers* <https://strasbourgobservers.com/2022/04/11/abdi-ibrahim-v-norway-a-new-zeitgeist-regarding-intercultural-adoptions-at-the-ecthr/>; See also Patsianta Kiriaki *D.M. and N. v. Italy*: Individual Measures in Aid of Biological Parents in Adoption Proceedings (2022) *Strasbourg Observers* <https://strasbourgobservers.com/2022/04/04/d-m-and-n-v-italy-individual-measures-in-aid-of-biological-parents-in-adoption-proceedings/> on the increased need for more bespoke approaches in such cases.

¹¹¹ Draghici, *op. cit.*, p. 279.

might best be navigated and survived. Generally, it is best to remain quiet and hidden, to work hard, nurture vulnerable others, and, at times, to rebel loudly against authority if needs must, to appeal injustices. Attic rooms might be similarly used to symbolise the dangers of an unparented or neglectful childhood, representing exploitation, loneliness, hunger, and cold. It is not hard to associate their narrow windows and many privations with the real-life workhouses, industrial schools, and maternity institutions that were still operating at the time these books were being published. The texts can be read, therefore, as warnings, that childhood and familial ties can be quickly destroyed or lost, bringing about frightening changes to a child's circumstances overnight. They show too the dangers of being orphaned or abandoned, and of being removed to a deficient alternative setting. Gratitude is a must-have, even where characters are seen to self-parent or to care for other children, turning themselves into quasi-adults very quickly. Endings are often particularly challenging too (they have this in common with many of the dystopian works examined in Chapter 5) in terms, for example, of convincing the reader that the 'fairy tale' resolution might have any real chance of happening. As Gilead (1991) has argued of children's literature, it can often serve to

...link slippery modern culture to the lost wholeness and stability of an imagined (and largely imaginary) past. The self-doubt and anxiety...are particularly evident in the most problematic of the narrative transitions, the ending.¹¹²

Just as in some of the court cases examined above, imperfect solutions are often the only ones possible. As with the other genres examined in this book, familial reunions may be highly problematic, flawed, or entirely absent. Such portrayals set out, however, the many and varied 'wider social and cultural ideas about childhood,'¹¹³ which is an extremely useful exercise. They can offer valuable child's eye glimpses of how certain changes to law and policy—and indeed the absence of legislation or meaningful consensus on certain issues—can quickly and adversely impact upon the most vulnerable, especially in times of crisis, whether sociopolitical, communal, or personal. They also, significantly, permit authors to critique questionable systems and highlight a wide range of injustices, sowing seeds of doubt in the minds of their readers as to the effectiveness of certain regimes. As such, they serve as advocates for social justice and for law reform. Much like Barrie's Kensington

¹¹² Gilead, Sarah, 'Magic Abjured: Closure in Children's Fantasy Fiction' *PMLA* (1991) 106 (2), pp. 277–293, p. 288.

¹¹³ Karín, Lesnik-Oberstein 'The Psychopathology of Everyday Children's Literature Criticism' *Cultural Critique* (2000) 45, pp. 222–242.

Park fairies, certain authors are perhaps keen to construct a sort of temporary protection against the harms of unjust decision-making. In doing so they are adding to the considerable body of folklore that already exists in relation to orphanhood, otherness, and the myths of reunion. They are also presaging in many ways the more obviously strident work of the writers examined in the next chapter.

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5

Legal Fictions, Dystopian Truths: [Re]Writing Family Life Rights

5.1 Introduction

I gave her loneliness. And I gave her loss. I transferred a memory of a child taken from its parents.

—Lois Lowry *The Giver*, 142

Forced adoption and orphanisation have frequently been depicted in various works of dystopian fiction: usually they underscore the corrupt nature of a revolutionary or totalitarian regime. Civil and political rights violations (torture, slavery, deprivation of liberty, or loss of life) are often the key plot points, but the absence of family life rights may lead to the most emotive scenes or resonate deeply with readers. The dehumanising treatment of mothers, infants, and children speaks volumes in these contexts: characters' accounts of their experiences provide the sort of detail that would not be out of place in the real-life testimonies of survivors of institutional abuses. Their evidence speaks not only to their own experiences but also to the wider societal effects of such violations. As Toma (2017) notes of dystopian works of fiction:

...dystopia is a genre in itself, which possesses its own strategies: hostility towards the body, loss of identity, alteration of family life, euthanasia, the repression of literature and arts, the brave who rebel against the oppressive

system...it pays great attention to social and political critique. Thus, a dystopia may be considered a cautionary tale which warns the reader about the possible disastrous outcomes of certain trends in contemporary society.¹

Many of the narratives discussed below also contain echoes of folkloric warnings and fables: archaic superstitions and fears from earlier eras re-appear here as cautionary tales, and as reminders of the dangers of encountering the unknown other (or, of trying to uncover long-obscured truths and injustices). Elements of Gothic and Victorian horror may be evident, with high walled, prison-like institutions ‘housing’ mothers and/or their children. Scarcening resources may exacerbate civil unrest amongst those who are disaffected and discriminated against. Deep-seated misogyny—often tied to extremist political or religious beliefs—may also be a factor, with altered or sealed birth records copper fastening the shame and secrecy that enables or perpetuates the corrupt administration’s existence. The easy erasure of fundamental rights is a core theme: capital punishment and/or fatal exiles, together with the loss of identity and familial connections, feature regularly. The justification of these rights violations—on the basis that some greater good requires sharp sacrifices—sees sections of the population being othered in some way. Law’s remit here does not extend to protecting the vulnerable; rather it often exists to force through and uphold unethical or illegal decisions, which bolsters the position of ruling elites and worsens inequalities.

These tend, as ever, to be grounded in birth status or the presence of some otherness that is perceived as threatening to the status quo. Violations involving matters of home, family, and privacy are often integral to the narrative, even if they seem at first blush to be only lurking in the background for most of the time. Close readings reveal that the concepts of family, motherhood, and child protection tend to be redundant in these dystopian civilisations, yet, by their ‘absence’ have become deeply weaponised: babies tend to be removed at birth, deemed orphan or foundling (or both), and placed immediately into some form of substitutive, perhaps institutionalised, care. Much like the foundling ‘homes’² and hospitals of earlier eras and genres, the places where these orphanised children of dystopian fiction are born, relinquished, or raised, generally resemble prisons or orphanages

¹ Toma, Monica Alina, ‘Dystopian Community in Lois Lowry’s Novel *The Giver*’ *Caietele Echinox* (2017) (32), pp. 227–235, p. 227. See further Shaddox, Karl, ‘Generic Considerations in Ishiguro’s *Never Let Me Go*’ *Human Rights Quarterly* (2013) 35 (2), p. 449 on how Ishiguro resembles the abolitionists, opting for sentiment rather than didactic polemic, to bring ‘acute closure’ (p. 450).

² Coen, Mark et al. (eds), ‘*A Dublin Magdalene Laundry: Donnybrook and Church-State Power in Ireland*’ (2023) Bloomsbury: London note that the use of the word ‘home’ in this context can be contentious, given the carceral nature and punitive regimes of certain institutions.

(*Logan's Run*), residential schools and workhouses (*Never Let Me Go*), or superficially genteel but colourless venues for profound abuses and inequities (*The Giver*, *The Handmaid's Tale*). Their familial settings, therefore, become battlegrounds for resistance, as much, if not more so than the desolate landscapes that backdrop them. Dissenting opinions and calls for sociolegal reform tend to originate and play out within these private, personal spaces, as the notions of family, parenthood, and parenting become brutally warped or invisible, replaced perhaps by some form of technology that provides substitutive 'care.' In sum, all of these things serve to nullify or profoundly diminish the concept of family life rights.

The second half of the chapter looks to recent Investigations into historic rights violations (in Ireland and the UK) involving forced adoptions and its intergenerationally harmful consequences. The testimonies of mothers and adoptees include accounts of torture, forced labour, and indeed loss of life all of which call to mind some of the worst, most horrific aspects of dystopian literary fiction. For example, McGettrick et al.'s (2021) observations of Ireland's Magdalene Laundries (which often had links to the criminal justice system and to Mother and Baby Institutions, and are therefore relevant here) could easily apply to the situations depicted in these dystopian novels:

...the women's treatment amounted to slavery, servitude and /or forced labour as defined by international law...the State had violated its protective obligations under several international treaties, the ECHR and arguably also the Irish Constitution.³

The novels discussed are as follows: Nolan and Johnson's *Logan's Run* (1967), Atwood's *The Handmaid's Tale* (1985), Lowry's *The Giver* (1993), and Ishiguru's *Never Let Me Go* (2005). Two sequels are also referred to namely Lowry's *Son* (2012) and Atwood's *The Testaments* (2019), as they deal with reunions between estranged mothers and their children (albeit briefly). These works touch upon key aspects of lost or denied kinships and genetic origin, and the intergenerational harms occasioned by orphanisation and otherings. Many of the myths surrounding infant relinquishment and reunion are also on display here: tabula rasa infancies, and the assumption that relinquishment is always consensual. As 'speculative memoirs,' the texts offer useful depictions of how social injustices might quite easily become normative, culturally acceptable practices, deemed justifiable on the basis that they are necessary, proportionate responses to some perceived social or

³ McGettrick, Claire et al. (eds), 'Ireland and the Magdalene Laundries: A Campaign for Justice' (2021) I.B. Tauris: London, p. 70.

existential crisis (involving health, overpopulation, infertility, or war).⁴ They also capture the difficulties of searching for original truths and the harmful consequences of orphanisation. There are significant commonalities across these books: commissioned, commodified infants are generally removed at birth and then—unless they are deemed surplus or inadequate—cared for by substitute parents (*The Giver*, *The Handmaid's Tale*), armed robots (*Logan's Run*), or aloof staff in austere facilities designed for eventual organ harvesting (*NLMG*). The terms orphanage, adoption, surrogacy, and foundling are never used, nor are those of abandonment or infanticide: exposure, in some shape or form, is clearly occurring at various points, however. The absence or loss of genetic identity is also significant: there is simply no room for the concept of a right to family life. It has become a privilege, which can be summarily withdrawn, often alongside the right to life.

5.2 Traditional Folkloric Fears, Dystopian Law-making

...cures for the old sicknesses...

—Kazuo Ishiguro, *Never Let Me Go*, 248

This sub-genre of science fiction is well known for its ability to offer trenchant critiques of law and policy and of civil or political rights violations sparked by the rise of a new (or old) regime. It can provide telling glimpses of infringements of family life rights and useful insights into why such violations occur. Dissenters are exiled, sedated, or executed: spaces associated with home life can quickly become battlefields, as the concepts of family, family life, and family life rights are eroded and altered beyond recognition. This may be so even where the wars or armed conflicts that led to sociocultural upheavals in the first place have ostensibly ceased. Other rights tend to be equally scarce (access to justice, freedom of information, dignity) reflecting the wasteland scarcity of key resources (food, children, fertility, land, peace). In order of publication, the key premises of the novels can be briefly summarised as follows: Nolan and Johnston's *Logan Run* (1967) is set in the near future, on a dying Earth ruined by conflict and overpopulation. Food and shelter

⁴ McDonald, Keith, 'Days of Past Futures: Kazuo Ishiguro's *Never Let Me Go* as "Speculative Memoir" *Biography*' (2007) 30 (1), pp. 74–83, p. 75, noting too that *NLMG* offers glimpses of a world 'disturbingly similar to our own, and crucially, the practice of harvesting has become a largely unspoken but widely recognized fact of life, drawing parallels with the everyday human injustices witnessed in contemporary culture.'

are so scarce that good citizens 'voluntarily' submit to euthanasia on turning 21. Anyone who attempts to escape this fate is deemed a traitorous 'Runner' and, if caught, summarily executed by the militia ('*Sandmen*'). The main character Logan, undercover Sandman turned Runner, searches for answers as he tries to flee. Life in this civilisation is short but devoted to brightly lit hedonism, to the extent that family life, motherhood, and mothering are all irrelevant and obsolete: infants are removed at birth and raised by armed machines behind razor-wired high walled prisons. Genetic connections have been rendered invisible or unknowable.

Atwood's *The Handmaid's Tale* (1985), though famously not grounded in anything science-fictional, still makes several important points about the nature of human rights and the impacts of orphanisation and identity loss. It is a memoir detailing the 'plight of a woman in a world where biological reproduction has been hijacked by a totalitarian state.'⁵ Its newly founded 'nation' of Gilead (though not recognised as such by the novel's international law community) prizes patriotism, religious fervour, and 'voluntary' altruistic surrogacy. Infertility is now so widespread, that the need to 'cure' it has been used as justification for the commodification and commissioning of infants and the enslavement and abuse of young women, termed *Handmaids*. They are ceremoniously raped, forced to bear, and relinquish their babies. Swathed in scarlet robes, with faces hidden by white, wimple-like bonnets, these so-called fallen women⁶ do not qualify as rights-bearing citizens despite their much-coveted fertility. They are chattel to be circulated amongst the ruling classes to produce babies for them, while atoning for whatever 'sins' they are accused of committing pre-revolution (immodesty, committing adultery, being divorced, or non-heterosexual, and so on). The concept of adoption has become obsolete: there is no need for paperwork or legal proceedings because these infants are deemed to belong to their substitute parents long before conception. Ownership is a key theme, with the narrator remaining nameless, having had her own name overwritten by the 'Commander,' who owns her.⁷

Lowry's *The Giver* (1993) features a literally colourless, post-war society where everyone is adopted, although again this term never appears in the text. All babies are conceived by artificial insemination of carefully selected very

⁵ McDonald Keith, *op. cit.*, p. 76.

⁶ They are deemed less respectable than the virtuous wives of Gilead's Commanders, who govern this society.

⁷ She is known as '*Offred*' ('Of Fred') to indicate ownership by the Commander who heads her household, but also, as Atwood noted, to call to mind the concept of being 'offered' up as sacrifice (Loc 107 Kindle ed.). The Handmaids are recycled across families and further dehumanised through elaborate, abusive rituals and the presence of an armed militia.

young *Birthmothers* who—as we learn in the sequel, *Son* (2012)—are termed ‘*Vessels*,’ and blindfolded during the birth to avoid seeing ‘*the Product*’ that they are delivering. These girls have been chosen by the ruling Committee for this ‘career,’ which is framed as a noble and altruistic option, but still very much disparaged. Infants are raised from birth in a facility run by dispassionate *Nurturers* until—or rather if—they are approved for assignation to a suitable ‘family unit’ at some point in their first year of life.⁸ Superficially, this nameless, emotion-free community lives out a gently humdrum, largely safe existence, grounded in consented-to *Sameness*, and freed from all knowledge or awareness of humanity’s atrocity-filled history. No unpleasant memories of famine, war, or injustice pain the members of this society, thanks to medication and the presence of their solitary wise elder, the titular character. He suffers greatly with knowledge, guilt, fear, and empathy so that the rest of the villagers do not have to.⁹ The downside of this arrangement is that it leaves no room for genetic identity or kinship, ancestry, emotional responses, or sexual desire. The notion of family has been replaced by that of the sterile family unit, with parenting now a time-limited, perfunctory civic duty, though couched in terms of privilege. Population control is the main concern alongside preventing a return to war.¹⁰ Jonas, the main character, attempts escape to save his infant foster brother, who has been deemed ‘*Inadequate*’ and scheduled for ‘*Release*,’ a euphemism for unseen euthanasia and infanticide.

Ishiguro’s *Never Let Me Go* (‘NLMG’), despite having the fewest obvious connections to adoption, still offers profound insights into the peculiar types of systemic otherness that can arise from having unknowable origins. The novel’s premise is that clones have been created and raised as organ donors, to ensure the health of the human population (the ‘normals’). Their search is for information, to find out *what* they are, rather than *who* they are, although there is a notable scene where Ruth, a young clone, follows a woman she believes to be her ‘possible,’ (a de facto genitor, from whom she might have

⁸ The movement of children—their trafficking, rather—across familial boundaries and borders is framed as an essential aspect of survival. Drugs are willingly taken by the residents of this nameless community to repress any ‘*Stirrings*’ of emotions and sexual desire. This ensures a compliant population grounded in consensual ‘*Sameness*’ that prevents rebellion or fresh outbreaks of war. Unlike the backdrop of forced infant relinquishment seen in *The Handmaid Tale’s* (which relies upon a very public, visible subjugation and dehumanisation of surrogate mothers), the village in *The Giver* seems a relatively safe, pain-free community. Its residents exude placid contentment within their heavily regulated and surveilled daily existence: there is neither hunger nor poverty, but the humanising concepts of emotion, bright colours, love, filial obligation, and music (plus decent book collections) are alien to them (p. 74).

⁹ *The Giver*, p. 173.

¹⁰ He vetoes a request for more births on the basis that overpopulation risks famine.

been created).¹¹ A key theme is that of reunion, and how it may often be flawed and harmful. The narrator Kathy's quest for answers speaks to the futility of seeking out sharp truths that have been walled away to promote some greater good. It is suggested to the clones ad nauseum that they should be grateful for the small mercies shown to them, not least at Hailsham, the half-orphanage, half-residential school where they grew up in institutionalised poverty. It was still a better Home than most, apparently, given their access to some books and an education, and because they were kept largely in the dark about their fate until they outgrew childhood.

You were lucky pawns. There was a certain climate and now it's gone...you were better off than many who came before you. And who knows what those who come after you will have to face.¹²

A wide range of substitute carers (adoptive or foster parents, armed robots, 'talk puppets,' Guardians, and so on) are depicted in all the books. Some are amalgams of foundling hospitals, Victorian-era orphanages, or the (slightly) more modern maternity institutions of more recent times. Mothers are abused, belittled, tortured, stigmatised, exiled, or enslaved. Folklore is rife, in the form of warnings and guidance, and, as ever, filling the spaces left by law's absence or failings. We are reminded of the need for orality, and for verbal testimonies to be both preserved and listened to, alongside those that were recorded or written down, if they were fortunate enough to not be destroyed or sealed away. Illiteracy tends to be widespread in these dystopian tales (as a tactic to quell dissent) with access to books—and accurate information—often limited or directed towards texts that reinforce the prevailing mindset on 'otherness' and entrench or worsen inequalities.¹³ Searches—for truths, answers, or origins—are key. Reunions, if they occur at all, tend to be upsetting, sparking further harms, and reinforcing the shame and fear of those who traitorously searched. Genetic identities are framed as being so archaic a notion that they should not arise within the minds of the obedient, loyal citizen.

Characters, likewise, are frequently so dehumanised that they are completely excluded from any form of rights protection. They are so significantly 'less than' the rest of society that questions about law reform or

¹¹ Kathy rifles through a soft porn magazine at one point, focusing upon the faces of the female models, presumably searching for her 'Possible' (p. 124).

¹² *NLMG*, p. 243.

¹³ The clones of *NLMG* read Victorian novels, while in *The Handmaid's Tale*, the Aunts (the female gestapo who dispense harsh discipline and train/break the spirits of the Handmaids) are the only women allowed to possess literacy or be in the presence of the written words.

redress are moot. Similarly deliberate othering was used throughout history to manage or hide illegitimacy, preserve scarce resources, and enshrine the privileged, sacred sociocultural spaces that legitimate, respectable families—as defined by law or custom—tended to occupy within most cultures. Where rights abuses are justified in law—especially where they have arisen from lingering biases or superstitious beliefs—it can make law reform and redress nearly impossible.¹⁴ The ambiguous or melancholy endings that tend to characterise this genre bear this out, the plots of their sequels notwithstanding.¹⁵ Systems that are so entrenched and resistant to change are unlikely to see effective law or policy reforms. The only option is often for them to be destroyed fully (*Logan's Run*), or, if the characters have not managed to escape or challenge their otherness, for them to be quietly grateful and accepting of their 'less than' status and destiny (*NLMG*).

5.3 Othering and Orphanisation: De facto Foundlings

Why should every child be taken from its parents at birth?

—Jessica, *Logan's Run*, p. 51.

Life can easily mirror art, as seen when jurisdictions guilty of rights violations (or war crimes) involving forced adoptions either fail to apologise to survivors and victims or only do so inadequately. Within these novels, othering can be so intense—and successful—that it dehumanises the already inherently vulnerable: the 'surplus' infant or ageing person deemed to be a burden on society (*The Giver*, *Logan's Run*), the 'fallen' woman with envied fertility (*The Handmaid's Tale*, and in some respects, *The Giver*), or the commissioned, objectified being whose existence—and eventual destruction—can be justified on the basis that it is needed to cure illness (*NLMG*) or infertility (*The Handmaid's Tale*). To be other(ed) within these scenarios is to no longer qualify as human as defined in law or custom, and to therefore lack or have lost rights-bearing status. Apparently 'inviolable' rights—to life, or freedom from torture or slavery—can become privileges: *Logan's Run* offers a stark

¹⁴ As seen in Ireland (via legislation that opens birth records but still perpetuate differences and embeds unequal treatment, based on birth status) or the UK, where a formal state apology for 'family life' violations is still awaited (and seems highly unlikely).

¹⁵ *Son* and *The Testaments* do offer brief glimpses of familial reunion, just before they end.

example. Set in 2116, resources are so scarce—from overpopulation, ecological damage, and war—that family life is non-existent, lifespans are rationed, and the concept of rights is entirely fictive. Otherness is a highly visible condition, literally carried in the palm of one's hand, via a stigmatising crystal that changes colour to indicate age, and the sort of ageing that has been criminalised.¹⁶ On reaching 21, the laws on 'Lastday' kick in, and the 'palm flower' flashes a warning red before turning dark. Even those not-yet-othered, 'good' citizens must visibly embrace obedience, gratitude, and patriotism, before surrendering to their fate.¹⁷ Dissent cannot be tolerated, so fragile—yet brutal—is this system. Its template for social exclusion is echoed in the other books, especially for those seeking out origins or answers to hard questions. Conformity does not guarantee societal inclusion or survival however: *The Giver* chillingly depicts the almost gleeful killing of a perfectly healthy newborn twin, who is euthanised simply because he is deemed surplus.¹⁸ In *The Handmaid's Tale*, subservience and sacrifice are simply normative aspects of the newly (re)designated 'natural' order of things under Gileadean 'law.' Likewise, the treatment of the clones in *NLMG* worsens towards the book's close, despite—perhaps because of—their stoic altruism and resigned humility.¹⁹ There is no need to threaten them with ill-treatment or execution because they have already suffered the former and are now awaiting the latter. Banishment is meaningless given their pre-existing state of exile, which denies them the protections of full citizenship. They are worse off than even the Handmaids of *Gilead*, who—though utterly disenfranchised in terms of lacking rights and agency—are still on balance seen as just about human. As

¹⁶ Meaningful colours are everywhere in these texts. Red, obviously symbolic of impending danger or dissent, is seen in the robes of the enslaved surrogates in *The Handmaid's Tale*, while a shiny apple signals Jonas' ability to 'see beyond' in *The Giver*. In *Logan's Run*, the sinister 'stigmata' turn ashen once the designated lifespan has ended, at 21, reminding the wearer that they must, as loyal citizens, return themselves immediately to dust (or be blasted to nothingness) by the 'Sandmen' militia.

¹⁷ At the *Sleepshops*, staff medicate and soothe patrons into a 'consented to' self-culling, against a jarring backdrop of '...gaily painted interiors' (p. 14).

¹⁸ Overly visible genetic connections may be dangerous, hinting at familial bonds, perhaps also leading to (insurrectionist) thoughts of rights to family life and identity. Mirrors are rare, perhaps because they tend to reveal uncomfortable truths or evidence wrongdoing (as in many folk and fairy tales).

¹⁹ As in *The Giver*, drugs sedate and enable compliance with—and 'consent' to—the harsh strictures of this society. Parallels could be drawn with lactation-suppressing drugs (given to birth mothers) who were relinquishing which could lead to memory loss during labour. The use of 'powerful hypnotic drugs such as Sodium Pentobarbitone' has been noted, alongside the 'authoritative use of power' by professionals which further diminished women's capacity. 'Their volition to protect themselves was at a low ebb due to their dependent and extraordinary circumstances of birth, the immediate loss of their baby, and the drugs used on them...This was particularly salient in those who lost a baby to adoption when they went into labour with every intention of keeping their baby.' See further: *Adoption Trauma to Mothers: Dr. Geoff Rickarby's Testimony to the New South Wales Parliamentary Inquiry*. https://www.originscanada.org/adoption-trauma-2/trauma_to_surrendering_mothers/adoption-trauma-to-mothers-dr-geoff-rickarbys-testimony-to-the-new-south-wales-parliamentary-inquiry/.

commissioned, sterile clones they are mere chattels, with no claim to human rights protections nor any capacity to access justice, and no one to lobby for their welfare. Their deaths are inevitable and fully sanctioned by law: it is hard to imagine anything that might be used to threaten them into better behaviour. Like the biddable orphans that they read about in their Victorian novels at 'School,'²⁰ they are grateful for the smallest of mercies including the 'privileges' that flowed from their austere upbringing at Hailsham. Amongst the benefits of being raised there was their lack of exposure to hard truths. By the time they embark on their search for information, they are so thoroughly othered and origin-deprived that they only wish to be considered for a short deferral of their pre-ordained death sentence, arguing that they have shown signs of human worthiness. And yet, they exist here only as inhuman objects, bred for slaughter, as underscored by their childhood preoccupation with the various small, second-hand trinkets that they collect or earn as part of the Hailsham experiment.²¹ Some of these scavenged items, much like foundling tokens, are rich in symbolism. Kathy's fondness for a particular song on an old tape (entitled '*Never Let me Go*')—and her pitiful interpretation of it—draws upon the sadness and loss of many things relevant to adoption: infertility, the joy of motherhood, and the fear of non-consensual relinquishment of one's child.²² That these clones have always been indelibly othered is confirmed for them when they see the revulsion of their former Guardians during their awkward, upsetting reunion. They are treated with the sort of contempt more often seen in tales involving demons, changelings, and bastards.

And yet, they have displayed intelligence, loyalty, and compassion, much more so than some of the human, homicidal characters populating these novels. Their sense of otherness is so deeply ingrained however that they lack capacity for meaningful rebellion, acting as model citizens, self-policing, and never trying to shirk their horrific responsibilities.²³ Law—and lingering biases—have made these commissioned children more object than human, denying them agency and voice, and keeping them hidden from view so that those 'normals' who legislated and engineered them into existence would

²⁰ See further Hillard, M. C., '*Never Let Me Go*: Cloning, Transplanting, and the Victorian Novel' *Journal of Narrative Theory* (2019) 49 (1), pp. 109–134, on how the clones echo 'the haunted shades of Charlotte Brontë's degraded surplus population of teachers and governesses' (p. 110).

²¹ See further Keefer, L. A. et al., 'Attachment to Objects as Compensation for Close Others' Perceived Unreliability' *Journal of Experimental Social Psychology* (2012) 48 (4), pp. 912–917 on how 'when attachment security is threatened, one compensatory strategy is attachment to non-human targets.'

²² *NLMG*, p. 266.

²³ They look, and ostensibly are, human (albeit rights-less) which makes it difficult to understand why they do not attempt escape. Their only visible marker of difference seems to be their shabby clothing, in sharp contrast to those dystopian others that for example carry stigmata, have blue eyes, or wear distinctive uniforms.

not have to think too much about the origins of their freshly trafficked organs. The othering that occurs here recalls that of the ‘foundling’ who is deemed abandoned if not also stateless. Their presence may be unwelcome or worrying, for fear that they could upset the social order, through their monstrous nature, or latent evil intent (*NLMG*). Protective rituals or processes (*The Handmaid’s Tale*, *The Giver*) can create or legitimise new family units to prevent such untrustworthy others from gaining or usurping privileges to which they are not legally entitled or worthy of (*NLMG*, *Logan’s Run*). Orphanisation can cause irreversible otherings, useful when banishing still-living genetic relatives so as to minimise any lingering, unwelcome familial connections. Had the clones of *NLMG* been deemed human, they might have fallen within the remit of human rights protections,²⁴ or that of domestic law (e.g. wardship).²⁵ As non-humans, they lack the locus standi to bring any form of legal challenge, but—assuming they were able somehow to convince the authorities of their humanity—they still might not have sought redress, given how conditioned and institutionalised they clearly were. It seems likely that they would perhaps self-abnegate, and abide by their designated role, given that they never attempt to escape, and were hoping only for a deferral of their deaths, rather than the beyond-reach privilege of a permanent reprieve. They accept their otherness, identifying as different from the ‘normals,’ from a young age.

Labels, naming, and re-naming matter, as they do in adoption: they can generate or reinforce otherness, evidence nonhuman status, and indicate ownerships. In *The Giver*, for example, babies (‘*Newchildren*’) are initially allocated a number, in itself a dehumanising strategy. This number links them to their *Birthmother* (also referred to as ‘*the Vessel*’ in the sequel),²⁶ although no one shows much interest in tracing genetic relatives, ancestors, or siblings. Children are publicly named once—or if—they are placed within a family unit, but their original number might be used later by an angry adoptive parent as a means of chastisement, if they are irked by the child’s behaviour, which can render them ‘unworthy of a name.’²⁷ Such

²⁴ Relevant provisions include the right to life (Article 2 ECHR); freedom from torture, inhuman or degrading treatment (Article 3 ECHR); freedom from slavery (Article 4 ECHR), and the underpinning principles of equality of treatment and human dignity. Presumably, the Children’s Convention does not apply either, given their abhuman status, and their ill-treatment as children.

²⁵ If this alternative 1990’s set universe has anything resembling The Children Act 1989, there is presumably legislation in force that exempts these children from its protections on the basis of their ‘inhumanity.’ The inherent jurisdiction of the High Court also seems to be either non-existent here or to have been seen as not applicable, for the same reasons.

²⁶ *Son* (2012).

²⁷ *The Giver*, p. 50.

an act serves to remind the child that their continued presence or existence requires conformity. Failure to obey can cause a child—or indeed an adult—to be permanently exiled from the community (*‘Released’*) and sent to the mythical place known as *‘Elsewhere.’* These euphemisms for infanticide and euthanasia recall the folklore on exposure.²⁸ Moreover, infants born within this regimented, constantly surveilled society are treated as if *‘other’* from birth and must earn their place by proving from the start that they are compliant citizens. They are monitored for any characteristics that may detract from the common goal of *Sameness* that this nameless village has opted to embrace. If babies are classed as unsuitable for placement within a family unit (by not gaining enough weight, or not sleeping well at night), they are labelled *‘Inadequate’* and summarily *Released*.²⁹ Likewise, any surplus infants, such as a twin, are immediately and secretly euthanised, to keep population levels down³⁰ but also perhaps to further minimise the significance of genetic resemblances and identities and lessen the chance of people spotting any characteristics that might be telling, such as *‘pale’* eyes which are rare. *The Handmaid’s Tale* also has a brutal system for dealing with imperfect or unwanted infants (despite the infertility crisis):

To go through all that and give birth to a shredder... We didn’t know exactly what would happen to the babies that didn’t get passed, that were declared Unbabies. But we knew they were put somewhere, quickly, away.³¹

Logan’s Run similarly orphanises, indoctrinates, and dehumanises from birth, with babies removed from their mothers, and placed in the institutional care of mechanised, armed *Roboguards*, cribs that can diagnose and heal illnesses, *Talk Puppets* (who help with speech), and stern but efficient *Autogovernesses*. Though not a major plot point (as opposed to the legalised daily mass slaughter happening outside these nurseries), forced infant relinquishments are still an important enough issue to open the novel with. The very first scene depicts the final moments and thoughts of a female Runner just prior to her execution:

²⁸ Until the publication of the sequels, one possible interpretation of Jonas’ ambiguous experience at the novel’s end was that he and Gabe had died from exposure to the cold.

²⁹ Parallels can be drawn with real-life adoption policy and practice. See, for example, Ireland’s 2021 Report, Chapter 12, para 12.35 which states that *‘Children who failed to thrive were not placed for adoption; they were retained in institutions, which meant that they continued to fail to thrive’* (p. 20).

³⁰ *The Giver* p. 114.

³¹ *The Handmaid’s Tale*, p. 113.

Off to her right she could see an unending length of metalmesh beyond a stretch of dead asphalt. Far out on the pavement sea was a cluster of teeter-swings. An industrial nursery; it had to be Stoneham or Sunrise. *Perhaps her baby was there!*(emphasis added)³²

As in the other novels, orphanisation minimises or nullifies genetic connections and natal kinships. Citizens must be dehumanised to prepare them for a truncated, abuse-filled life, and a dutiful surrender to the euthanising *Sleepshop* at 21. There is neither time nor space for anyone to personally care for their infants, given that hedonism is the main aim. The severing of family ties makes sense from the perspective of the AI system that has governed for centuries. Fashioning and maintaining an ordered, compliant populace, who will be averse to uprisings or dissent, is key. Such institutionalisation has produced a flock of obedient, patriotic citizens who can be relied upon to join in enthusiastically when public otherings are happening (if a *Runner* is spotted, say). Names are recycled, but with a number added, to underscore that there are even too few names to go around (presumably the ruling AI system cannot generate new ones) but also as a reminder that everyone is expendable here. It is unclear if the names indicate genetic ties: as in *The Giver*, people have limited interest in identifying ancestors or relatives (with the marked exceptions of the Runner executed in the opening pages who was clearly a mother, and Jessica who somehow knew her brother, and which might explain why they opted to Run). Knowable ancestries, genetic connections, and familial bonds can be dangerous things,³³ from the perspective of those who govern, given that these might provoke a desire to revolt. Likewise, the presence of such connections could make it more difficult for those in power to convince their citizens of the merits of such noble sacrifices as voluntary euthanasia, strategic infanticide, or the forced relinquishment of babies to aid some greater good.

Genetic ties are significant in *The Testaments* as seen when Gilead is eventually overthrown largely by the efforts of a small team of related women (mother and two daughters) separated by forced adoptions decades earlier.³⁴ It is fitting that they bring down the regime that othered and harmed them,

³² *Logan's Run*, p. 9.

³³ There is an incomplete memorial to a pivotal moment in the uprising ('the Burning of Washington') which is unfinished because the artist sculpting it had 'aged out' before completing it. Another monument to war and the Wild West era ('Crazy Horse mountain') did survive however, highlighting this society's preference for political (indeed genocidal) rather than familial symbolism. Metallic golden eagles recall other regimes (Germanic, Holy Roman Empire, Nordic) that prized warlike tendencies. See further Pickenpaugh, T., '*Symbols of Leadership in Traditional and Modern Societies*' (2022) Dorrance: Pennsylvania.

³⁴ Not forgetting the efforts of Aunt Lydia.

and that they then have a brief reunion at the end of the book. Couples and siblings seem more likely or able to question authority and attempt escape. Even the passive clones of *NLMG* seek answers. That they were designed to be sterile (like *Frankenstein's* creature) makes grim sense. Familial and social connections can be useful when trying to evidence humanity, or when plotting a coup. The clones lack such ties under the laws—or the unwritten rules perhaps—that have been crafted to govern and curtail their existence. The relationship between Kathy and Tommy is not enough to save them or generate hopes of dispensation, or law reform. Had they been permitted to form legalised bonds, they might have been able to at least test the folklore and rumours on delaying their organ donations, to ‘complete’ a bit later and have a few extra years. Though Ruth is the only one seen tracking a ‘Possible’ genitor, some other clones presumably wonder about their origins too. Permitting the clones to access information on—or have contact with—those from whom they are ‘descended,’ would undermine the regime’s underpinning philosophy, which requires them to be so fully othered, that they can be deemed soulless non-humans from whom organs can be legally harvested during their lifetime. Allowing them to be curious or emotional over their possible ‘ancestral’ identities or commissioned origins, would be tantamount to accepting that they are human, or at least capable of emotional human responses to an unacceptable situation.³⁵

Similarly, in *The Giver*, it is Jonas’ burgeoning ability to feel emotions that helps him attempt the rescue of his deemed ‘Inadequate’ foster sibling, Gabe.³⁶ Having visible familial ties and strong emotional connections could make it less likely that citizens will easily comply with harsh edicts demanding infanticide, self-euthanising, or the quiet relinquishment of newborns without ever seeing or holding them, all of which are normative in these novels. It was Jessica’s attachment to her brother (*Logan’s Run*) that motivates and empowers her to attempt escape—and to trust Logan—perhaps because her sense of identity was more pronounced than that of most of her fellow citizens. She notes near the novel’s end that her life has been saved by Logan several times, reminding us of the overlaps between the right to life and human dignity, and the importance of being able to form and preserve familial and social connections. It is noteworthy that reform of this

³⁵ Arguably, some ‘Possibles,’ assuming that they are informed that they have been cloned, might feel a sense of obligation or curiosity towards their ‘offspring.’ It seems more likely however that they might regard them simply as chattels, commissioned into existence only to be consumed, to address health issues.

³⁶ They might well have some genetic connection, sharing a rare, pale eye colour. It is significant that mirrors are scarce in their village, possibly because identity is a superfluous concept or there is a need to discourage citizens from dwelling on their physical features, given the emphasis on *Sameness*.

system is simply not possible: their only option is to escape it altogether and take some comfort from watching it collapse.³⁷ To live in these communities without questioning them is to accept that dehumanisation is a prerequisite for citizenship. As Matrix (2013) summarises, here, both ‘birth and mortality are strictly monitored and managed, not only via state surveillance, but via continuous self-examination.’³⁸ The model citizen looks inwards rather than out, and to things private rather than public, self-checking their palms for signs of ‘illegal’ ageing (*Logan’s Run*). This is seen also in the frequent reflections on thoughts and dreams, and the offering of repeated apologies for impolite behaviour (*The Giver*). These small but significant restrictions on personal liberty and family life can clearly have a ‘dehumanizing and disenfranchising’ effect.³⁹ This is perhaps why home places can easily become key sites for civil and political struggles and for organising resistance (*The Handmaid’s Tale*, *Logan’s Run*). Even where obedience is assured, rights violations can reinforce the message that, once othered, there is no reversal. The law’s remit in these contexts does not stretch to protecting the outsider (*NLMG*), framing them as less worthy and ‘less than.’ Justice has been rendered fictive, serving only to delimit the lives and behaviours of those classed as ‘less than’ fully human.

This is largely the blueprint for *NLMG*, where a final, poignant reunion between the clones and their former Guardians reveals much about their commissioned origins and inevitable fate. They discover that the rumours which had given them hope are unfounded legends. Their attempts to evidence their own humanity—by making art and poetry in childhood, and their ability to form romantic couples as young adults—are pointless, given that law and society have irreversibly confirmed their nonhuman status.⁴⁰ These beings were produced only to provide cures for ‘the old illnesses:’ as chattels; they lack even the very limited agency of the ‘Vessels’ in *Son* (whose belittled role as ‘Birthmothers’ is to carry the ‘Products’ to parturition and then, blindfolded, quietly deliver, relinquish, and forget them). Deemed soulless, the clones of *NLMG* call to mind the unbaptised infants of earlier eras who were similarly deemed undeserving of kinship and, in some cases, denied

³⁷ Parallels can be drawn with the collapse of some real-life systems and institutions, which were immune from reform or censure for so long that only their abolition would suffice e.g. Ireland’s Mother and Baby Institutions and the adoptee trafficking that accompanied them, or the residential schools that enabled ‘baby scoops.’

³⁸ Matrix, Sidneyeve, ‘The Chronopolitical Order of Things: Technologies of the Quantified Self in Andrew, Niccol’s, “*In Time*” and Michael Anderson’s “*Logan’s Run*”’ *Critical Survey* (2013) 25 (2), pp. 85–96, p. 93.

³⁹ Matrix, *ibid.*

⁴⁰ *NLMG*, p. 267.

appropriate burial rites. Once they have completed their donations they will be disposed of, much like the mothers in *The Giver* who are banished to manual labour after their third, final pregnancy. Such harvesting—of organs and infants—recalls the folkloric gleaning of abandoned, exposed infants by substitute parents, churches, and slave traders. It is telling that their institutionalised childhoods are utterly lacking in comfort. We see them trying to keep warm under society's detritus: unwanted bits of rubbish that, like them, have been cast out by society—'in the pitch dark...and the blankets weren't even blankets, but a really odd assortment - old curtains, even bits of carpet.'⁴¹ Such patchwork 'protection' is an apt representation of how the law is equally ragged and deficient, failing to cover their circumstances, and applying to them only to confirm their exclusion and dehumanisation. Their reading of Victorian books emphasises this further, as they wander or dwell briefly in spaces that resemble the orphanage or workhouse, rather than having any place of basic safety that might rightly be termed a home. The narrator Kathy is last seen windswept and backdropped by a desolate landscape, conjuring up a vision of Tommy's ghost upon the horizon.⁴² In the absence of compassionate laws or policies which might have enabled access to family life, she is left to fabricate this heart-breaking, imaginary 'reunion,' before quietly, obediently returning to her role supporting other clones through their donations. The scene may well resonate with those who have been similarly disenfranchised, in terms of being denied reunion or redress, with only illusory, self-imagined moments of kinship or contact for comfort.

5.4 (M)otherhood and Substitutive Care: Searches for (Uncomfortable) Truths

...modelled from trash. Junkies, prostitutes, winos, tramps. Convicts, maybe, just as long as they aren't psychos...

—Ruth, *Never Let Me Go*, p. 166.

The stereotype of the sinful, degenerate female ancestor is, sadly, neither new nor uncommon, regardless of literary genre or historical era. Within dystopian communities, most (birth) mothers are ill-treated and slandered, perceived by the rest of society as feckless, lazy, or untrustworthy. *Son* (2012)

⁴¹ *NLMG*, p. 116.

⁴² *NLMG*, p. 263.

depicts them as young women who are abused, derided, stigmatised, and disposable. It opens with a disturbing glimpse of one girl's dehumanising experiences during labour, which could just as easily pass for a scene from *The Handmaid's Tale*:

The young girl cringed when they buckled the eyeless leather mask around the upper half of her face and blinded her. It felt grotesque and unnecessary, but she didn't object. It was the procedure. She knew that. One of the other Vessels had described it to her at lunch a month before.⁴³

An older resident similarly disparages the life of her recently deceased friend, in *The Giver*: 'all lives *are* meaningful...but *Edna*. My goodness. She was a Birthmother, and then she worked in Food Production for years...she never even had a family unit.'⁴⁴ Despite the importance of the role, this career carries little respect, zero reward, and lifelong stigma: 'Three births, and that's all. After that they are Labourers for the rest of their adult lives, until the day that they enter the House of the Old.'⁴⁵ Even the enslaved, brutalised Handmaids of Gilead are given some small semblance of a reward if they deliver a healthy infant. They will, if the propaganda is to be believed, never face exile, nor be 'sent to the Colonies...never declared Unwoman.'⁴⁶ They are never mothers in the eyes of the law, however: they exist only as part of the supply chain benefitting those with greater resources. A similar displacement of infants in *The Giver*—from mother to nursery to adoptive placement at some point in the first year of life—is never termed adoption, fosterage, or surrogacy, nor is the concept of child trafficking even hinted at.⁴⁷ This de-mothered system is the only way for infants (the so-called *Products*) to enter this emotion-free society, devoid of history, colours, memory, and music. It is also the sole means for creating or expanding a family unit,

⁴³ *Son*, p. 3. As Lucas's (de facto adoptive) mother explains, 'Birthmothers never even get to see *newchildren*' (p. 22). This particular scene could arguably also work in *Logan's Run*, if—as is possibly the case—the authorities decree that mothers should not see their babies (as sometimes occurred in real life, if they were destined for adoption. See *Origins Canada (Adoption Trauma to Mothers: Dr. Geoff Rickarby's Testimony to the New South Wales Parliamentary Inquiry)* on the '...placing of screens to avoid them seeing the baby. Or pillows over the face, the immediate separation from the baby who was often taken outside to have the cord tied. (the mother ironically was the baby's legal guardian), the administration of the drug Stilboestrol by injection (and later by mouth) to dry up the milk.' https://www.originscanada.org/adoption-trauma-2/trauma_to_surrendering_mothers/adoption-trauma-to-mothers-dr-geoff-rickarbys-testimony-to-the-new-south-wales-parliamentary-inquiry/.

⁴⁴ *The Giver*, p. 31.

⁴⁵ *The Giver*, p. 22.

⁴⁶ *The Handmaid's Tale*, p. 126.

⁴⁷ On international adoption as child trafficking see further the excellent article by Smolin, David, 'Inter-country Adoption as Child Trafficking' *Valparaiso University Law Review* (2004) 39 (2), pp. 281–326.

which is limited to a maximum of two children, and as ever is subject to the village's governing Committee agreeing each placement beforehand.⁴⁸ These are family *units* rather than families: the substitute care that these transplanted children receive is perfunctory. They are temporarily issued with a stuffed toy 'comfort animal' which is recycled to a new child every few years.⁴⁹ Prior to being assigned to a family unit, the babies are looked after by *Nurturers* within a communal hospital-like facility.⁵⁰ Birthdays are irrelevant, replaced by an annual ceremony, every December, where every 'Newchild' 'born in the previous year turned One. One at a time—there were always fifty in each year's group, if none had been released'—when they are ceremoniously named and placed with a substitute family,⁵¹ in a supply chain mentality to keep emotions at bay. On the surface all is medicated politeness, order, and safety. However, some of the so-called Nurturers—when they are not euthanising unwanted babies—offer a level of infant care that might be considered worrying:

...most of the people on the night crew had not even been given spouses because they lacked somehow the essential capacity to connect to others, which was required for the creation of a family unit.⁵²

Logan's Run offers an even more nightmarish scenario,⁵³ where babies and young children are and guarded by armed, sociopathic machines making it reasonable to assume that there may well have been attempts in the past to either retrieve or steal infants: pregnant mothers may have sought an escape rather than relinquishing their babies, perhaps. Within these facilities infants are diagnosed and healed of physical wounds by mechanised cribs, educated in Playrooms, guarded by armed robots (and scary older infants), and soothed to sleep—whether they want it or not as Logan discovers—by automated rooms with smothering, padded walls, termed *Loverooms*. One of these horrific contraptions imprisons and sedates him in adulthood, assaulting him

⁴⁸ *The Giver* p 125. Families are comprised of 'Two children – one male, one female – to each family unit. It was written very clearly in the rules' (p. 8).

⁴⁹ They seem to serve a similar purpose to the 'talk puppets' of *Logan's Run*, giving these orphanised and transplanted infants something to attach to.

⁵⁰ Their existence is highly regimented and there is no guarantee that they will be accepted into the community as fully fledged citizens: they need to display acceptable levels of conformity, and physical and mental development, not to mention good behaviour.

⁵¹ *The Giver*, p. 11.

⁵² *The Giver*, p. 7.

⁵³ There are near-invisible microwires that shred any trespassers. Obliterating things beyond recognition (intruders, unsuitable babies, genetic identities), by ripping or blasting them into non-existence, is a common strategy. *The Giver* has a similarly ceremonious approach, in the communal chanting of names, aimed at erasing the memory of a deceased child.

to the sound of a repeatedly sung mantra: 'Mother loves you, loves you, loves you...'.⁵⁴ As with the constantly voiced apologies in *The Giver*, the repetition of certain phrases can easily render them meaningless and terrifying.

This room also presages the compulsory, fatal attendance at *Sleepshop* that good citizens must attend on the day they turn 21. Unsurprisingly, older infants are 'conditioned and hypnotaped against invaders.'⁵⁵ Other upsetting scenes from Logan's childhood are revealed when he enters a 'Re-live' chamber, a device that allows citizens to 'enjoy' again their most profound memories, usually while en route to their execution. Brief but telling glimpses of Logan's unpleasant childhood are shown, including traumatic episodes of abuse, bullying, and loss.⁵⁶ On having to leave the nursery at age 7, for example, he must relinquish the closest thing he has to a sibling or parent, which had helped him become socialised and learn to communicate:

...Logan was afraid. He wanted to take Albert 6, his favorite talk puppet, with him – but they wouldn't allow it. "Why, why, why?" he sobbed. "Not permitted," said his Autogoverness, and reached for Albert. The puppet ran after Logan, tiny feet pattering across the nursery floor. "Loge, Loge! I'll never forget you, Loge. Never forget you." They caught Albert and put him away in a box. And Logan screamed and screamed and screamed.⁵⁷

His earlier memories of infancy are of having his bodily needs met, by mechanised carers: 'He was one. He was warm. He was clean. He was full.'⁵⁸ The logic seems to be that, as 'blank slates,' babies require little in the way of emotional attachment, with 'good enough' caregiving consisting entirely in sufficient food, warmth, and hygiene.⁵⁹ In addition to being orphanised at birth, the children of *Logan's Run* remain forever parentless, with no chance of reunion as their ancestors will likely have been euthanised within a few years of their birth. The algorithm that designed this system has probably factored in the best interests of the child principle however, reasoning perhaps that they are better off imprisoned than they would be living with a very young mother in a highly dangerous city.

⁵⁴ *Logan's Run*, p. 111.

⁵⁵ *Logan's Run*, p. 109.

⁵⁶ *Logan's Run*, p. 123. Aged 9, he is randomly assaulted and humiliated by a gang of bullies.

⁵⁷ *Logan's Run*, p. 123.

⁵⁸ *Logan's Run*, p. 124.

⁵⁹ See further the seminal work of Winnicott, D. W., *The Child, the Family, and the Outside World* (1973) Penguin: UK; Bettelheim, B, 'A Good Enough Parent: A Book on Child-Rearing' (1987) Knopf: New York.

The Handmaid's Tale similarly relies upon violence to orphanise its infants, even prior to conception, so that in Gilead the notion of adoption is now redundant. Infants are predestined to belong to those Commanders who have forcibly fathered them. Elaborate, quasi-religious 'ceremonies' during birth and conception obviate the need for legal proceedings or paperwork. All of this has a Gothic quality, reminiscent of some of the darkest Grimm's fairy tales. When a Handmaid gives birth, for example, the adoptive mother—a Commander's Wife—simultaneously goes through the pretence of being in labour herself, surrounded by the other Wives from her local community:

A small thin woman, she lies on the floor, in a white cotton nightgown, her greying hair spreading like mildew over the rug; they massage her tiny belly, just as if she's really about to give birth herself.⁶⁰

There are bespoke Birthing Stools for two, with a 'double seat, the back one raised like a throne behind the other.'⁶¹ As with the contrived conceptions, we see the Wife seated behind the Handmaid for the big moment, in an elevated position above her surrogate: here, she manages only a 'tight little smile...like a hostess at a party she'd rather not be giving.'⁶² The other Wives, still eating, drinking, and gossiping, appear only after the birth, in contrast to the Handmaids who encircle the labouring mother and encourage her with communal chanting and sympathy pains. Once the child has been inspected for defects, cleaned up, and placed in the arms of her adoptive mother will she be named by the Wives. Their boisterousness and palpable envy ('like faint wisps of acid'⁶³) contrasts sharply with the respectful hush of the exhausted Handmaids. We learn later that this baby, for reasons unknown, is later rejected by the adoptive parents and disposed of.⁶⁴

There is little ceremony surrounding births in Lowry's universe (*Son*). Claire's experiences, aged 14, would not be out of place in other dystopias: she delivers blindfolded, and '...her hands were tied on either side of the bed. She was unable to move.'⁶⁵ She is at least given an anaesthetic and attended by doctors, unlike her counterparts in Atwood's Gilead. It is hard to say which of

⁶⁰ *The Handmaid's Tale*, p. 116.

⁶¹ *Ibid.*, p. 117.

⁶² *Ibid.*, p. 125.

⁶³ *Ibid.*, p. 126.

⁶⁴ Other aspects of the system are questionable too: half siblings are presumably never in contact with—perhaps never made aware of—each other, and as *The Testaments*, reveals, there is no obligation on adoptive parents to tell their child that they were Handmaid-born. Such ancestry carries stigma and gives rise to superstitions and folktales.

⁶⁵ *Son*, p. 9.

these various systems is most cruel. Handmaids must nurse their children for a few months before departing for a fresh assignment with another infertile family, whereas Lowry's Birthmothers never get to see or hold their infants. There is more than a hint of real-life maternity 'home' practices in both of these scenarios (as outlined below).

She averted her eyes from the Nurturing Centre. It was, she knew, where the Products were taken after the birthing. Usually in groups. Early morning, most often. Once, sleepless at dawn, she had watched from the window of her cubicle and seen four Products, tucked into baskets, loaded into a two-wheeled cart attached to the back of a bicycle.⁶⁶

We never see the early childhoods or the creation/birth of the clones in *NLMG*; it would be a considerable stretch to compare their unseen, absent genitors to the often highly distraught mothers of the other novels. This book's relevance to adoption lies instead in its capturing of the darker aspects of orphan and foundling experiences, namely, life in a bleak institution being raised by distant substitute carers. The clones' stoicism echoes that of the brave, grateful Victorian orphan, about whom they have read via their limited—deliberately curated—book collection. The futility of searching for origins or answers where records have been sealed, vetoed, destroyed, falsified, or lost (usually in a fire) is a key theme here too. Hailsham, their 'home,' was in a place so remote that it is impossible for former students to ever find it again. It was not encircled by the tall brick walls that usually surround orphanages, but bordered instead by frightening, mysterious woods, and a 'dark fringe of trees.'⁶⁷ These cast sufficiently distressing shadows to keep the clones captive, frightened, and utterly apart from normal persons, as society required. The 'horrible stories about the woods' recall, for example, scenes from texts about escaped slaves: '...his body had been found two days later, up in those woods, tied to a tree with the hands and feet chopped off.'⁶⁸ This is a fitting nightmare, given that they will gradually lose parts and pieces of themselves through the donation process. Another Gothic tale details how the ghost of an exiled girl came to haunt the same trees: 'one day she'd climbed over a fence just to see what it was like outside...when she tried to get back in, she wasn't allowed.'⁶⁹ Already excluded from society, it is easy to imagine how a further exile from the grounds of their institution could be a terrifying

⁶⁶ *Son*, p. 19.

⁶⁷ *NLMG*, p. 45.

⁶⁸ *NLMG*, p. 46.

⁶⁹ *Ibid.*, p. 46.

prospect. This also explains to some extent why the clones never attempt escape.

There is a notable reunion of sorts, in a dimly lit, ominous house where Kathy and Tommy put questions to Madame and Miss Emily—two of their former carers. The place has all the hallmarks of an abandoned foundling hospital or Victorian era convent: unlit recesses, worrying shadows, and cobwebs, where denials of culpability mix with uncomfortable silences. The meeting raises more queries than it answers, as searches for origin often do.⁷⁰ Tragic revelations are eventually made, and the rumours about being able to defer donations are finally quashed, confirming the indelible, fatal otherness of the clones: ‘We took away your art because we thought it would reveal your souls. Or to put it more finely, we did it to *prove you had souls at all*.’⁷¹

Having been abandoned and condemned by the state that commissioned them for live organ harvesting, their experiences are akin to exposure, but lack even the slim hope of the foundling, that they might be taken in and protected by someone kind.⁷² Society classes them as soulless, abhuman monsters to better navigate the ethical dilemmas of their neglect, torture, and eventual murder: this harks back to the ill-treatment and infanticide of ‘other’ surplus or unwanted children, as seen throughout history (and in much dystopian fiction). Their disposability benefits society, to the extent that their innate and created vulnerabilities must be ignored or dismissed as unimportant. Again, like Frankenstein’s creature and the much-feared bastards and changelings of folklore, it is their perceived capacity to somehow usurp ‘legitimate’ humans that seals their downfall and requires their comprehensive exile from rights protections: ‘...a generation of created children who’d take their place in society?... That frightened people. They recoiled from that.’⁷³

⁷⁰ Miss Emily, a former activist for the cause of better treatment for the clones, is now frail and wheelchair bound. She is hopeful that this ‘contraption isn’t a permanent fixture’ (p. 234) which could suggest that whatever ails her might potentially be curable. If she is awaiting a transplant—and this could explain her odd demeanour and her need to sell a treasured cabinet—then this would suggest that she has finally accepted the double-edged benefits of this new system: this in turn underscores the difficulties of achieving meaningful reforms in a climate of want and scarcening resources.

⁷¹ *NLMG*, p. 238.

⁷² Kathy’s role, even after learning all the unpleasant truths, remains that of a highly successful Carer to her donors (she has yet to begin her own donations, but will soon start, after the novel’s end). She might be viewed as akin to a social worker or therapist, keeping her donors calm, and supporting them through each recovery, to maximise their ‘productivity.’ The producing of things was a highly regarded activity at Hailsham: writing poetry and creating works of art for barter or sale or inclusion in the mythical Gallery turned out in the end to be utterly meaningless and pointless, however.

⁷³ *NLMG*, p. 259.

The Giver's system of early substitutive childcare—generally apathetic but sometimes infanticidal Nurturers—is followed by dispassionate fosterage with unrelated strangers.⁷⁴ As in the other novels, genetic kinships may be denied, overwritten, or deemed completely irrelevant. Sometimes the ties of biology are hinted at however, when characters note unexpected but obviously significant physical likenesses (such as eye colour). Of course, 'no one mentioned such things; it was not a rule, but was considered rude to call attention to things that were unsettling or different about individuals.'⁷⁵ And yet, Jonas's sister still teases him about his resemblance to the increasingly 'Inadequate' infant Gabe: 'Maybe he had the same Birthmother as you.'⁷⁶ Genetic kinships are apparently too dangerous to be encouraged or tolerated, perhaps because they might play a role in enabling dissenting opinions or encouraging group associations. Here, social and familial connections (they cannot be termed emotional because human emotions have been medicated away) are only temporary, ending conveniently when children leave home to take up a designated place in society. The concept of grandparents is alien, until Jonas receives a memory-rich vision from the Giver featuring them. Child rights are non-existent. Even very young infants are disciplined with a 'punishment wand' if they cannot grasp the nuanced meanings of certain words and phrases.⁷⁷ It is unsurprising that once children have turned 12, childhood—such as it is—essentially ends, and no one is much concerned anymore with knowing what age someone is. Records exist but need to be actively sought out; this sedated populace lacks the energy or emotional interest to do so.⁷⁸ Jonas' curiosity—matched by his growing ability to see things in colour and 'look beyond'—sets him apart from his peers and his family. Personal questions are taboo, but there is an ironic emphasis on language and ensuring that correct terms are always used, to the point that young children are mocked and abused if they mix up their words. Verbal apologies are so frequently repeated in this community that they have become meaningless; this echoes to some extent the frequency with which apologies have been made in respect of some adoption-related abuses, but not followed up by meaningful forms of redress. As in the other books, words and language matter, whether written

⁷⁴ Familial life ends as soon as children reach adulthood and take up employment. Once redundant, parents become *Childless Adults* and must move out to a separate living area, so that they rarely if ever see their children again.

⁷⁵ *The Giver*, p. 20.

⁷⁶ *Ibid.*, p. 20.

⁷⁷ *Ibid.*, p. 55. There are other cruelties apparent, with older persons facing similar discipline (p. 90).

⁷⁸ As Jonas's mother explains, 'After Twelve, age isn't important. Most of us even lose track of how old we are as time passes, though the information is in the Hall of Open Records, and we could go and look it up if we wanted to (p. 17).'

or spoken—especially perhaps, the spoken variety—but they can easily be emptied of meaning and amount only to lip service.

5.5 Reunions, Rights, and Other Myths

She'll be allowed to nurse the baby, for a few months, they believe in mother's milk. After that she'll be transferred, to see if she can do it again, with someone else who needs a turn.

—*The Handmaid's Tale*, 126

Reunions between estranged genetic relatives do not often occur within *The Giver*. In the dark, but ultimately fairy tale-esque sequel, *Son*, Claire—Gabe's Birthmother—only by chance is able to track him down and surreptitiously bond with him for a little while in his infancy when she pretends to volunteer at the Nurturing Center. This happens through a combination of her being let go early from the birthing unit after needing a C-section, not being given medication, and accidentally learning the number that was assigned to him at birth. Many years later—after escaping her original community, suffering amnesia, and starting a new life elsewhere—she eventually finds him again but only after numerous horrific trials and at great personal cost. She has surrendered her youth to a fearful, sharp-dressed demon in exchange for information on her son's whereabouts. The black-market aspects of trying to trace estranged, anonymous relatives outside of the normal legal channels—against a backdrop of shame, secrecy, and subterfuge—are perhaps fairly represented by this allegory. She fails to remember her son's name correctly, having been through so much and having misheard it as 'Abe'⁷⁹ but she is still able to transact with the evil 'Trademaster' and get the information needed to find her son, now an adult. Such things might resonate with mothers who have lost children via forced adoption. She is powerless to keep her baby even after having had considerable amounts of contact time with him. She feels compelled to leave her home, suffering memory loss of her trauma until her identity as a mother is triggered by witnessing a normal birth.⁸⁰ She is later stigmatised by her new community—and briefly shunned—when she admits to having had a baby while unmarried.⁸¹ The reunion with her adult son is

⁷⁹ *Son*, p. 263.

⁸⁰ *Son*, p. 190.

⁸¹ Her de facto adoptive mother, Alys, acknowledges all of this.

imperfect, occurring on her death bed, she having been prematurely aged by her ordeals. McKee's (2019) observations seem apposite here: she notes the

...violence of love associated with adoption in light of the multiple losses it inflicts on birth families and adoptees...[and] fraudulent and deceptive practices associated with the adoption industry. Good intentions are not sufficient in remedying the lifelong implications of adoption in the lives of all parties involved.⁸²

The book's somewhat glib ending magically cures her, restoring her youth, in keeping with the nicer fairy tale conventions that have featured within it: perilous journeys, dangerous bodies of water, heroic and literal uphill struggles, birds that hinder her (who are protecting their own nesting chicks, in fairness), and the need to resort to extraordinary, 'magical,' and illegal methods to progress her search. Her son, for his part, must literally face down the same demon that nearly killed his mother, to enable belated reunion, and try to reverse the damage done to her. He does so by convincing it that meaningful familial connections are both possible and beneficial and that they can address old injustices and promote healing. All of this could serve as allegory for the struggles faced by adoptees seeking their original birth certificate, or for the uphill efforts of those who have lobbied for legislative reform for decades on the issue of opening sealed birth and adoption records.

As in the other novels, small items—here, it is the 'comfort object'—serve as important breadcrumbs and mnemonic tokens. It is noteworthy too that this novel touched upon some aspects of parenting that *The Giver* avoided. It is far from an unbridled paean to blood-ties and easy, glib reunions. Kept children are terribly abused here by their genetic parents, leaving the reader to wonder if abandonment or removal might not have been a safer option for them. Claire herself is taken in by a kindly midwife, the elderly Alys who becomes her foster mother but still fully and gently acknowledges the girl's origins: 'You're a good girl,' Alys murmured. 'Your own mum must miss you fierce.'⁸³ *The Testaments* devotes a half page at the end of the novel to providing a quickly glimpsed reunion between the former Handmaid Offred and her two lost daughters, now adults. As with *The Giver*, the original, near-perfect, ambiguous ending has been overwritten in the sequel by one

⁸² McKee, K., 'The Consumption of Adoption and Adoptees in American Middlebrow Culture' *Biography* (2019) 42 (3) Biographic Mediation: On the Uses of Personal Disclosure in Bureaucracy and Politics, pp. 669–692, p. 670.

⁸³ *Son*, p. 227. Claire recalls the indifference of the mother who raised her, in her family unit, due to the pills and explains that they (her people, a concept she also struggles to define) 'thought that it fixed a lot of ills, not to have feelings like love' (p. 228).

that offers more clarity and closure,⁸⁴ but lacks the grittier realism that a measure of uncertainty would have brought, especially in terms of depicting the difficulties of reunion in real life. As one would hope for in a dystopian tale, regime change seems to be unfolding, given Atwood's epilogue. Reunions are not forthcoming in *Logan's Run*, but then they were never the core issue, which was to simply find some answers and escape the irreparable, corrupt system, rather than seek out a means of reforming it. The folklore turns out to have been true—almost always a welcome development—as the mythical, elderly (but well face-lifted) leader of the resistance, Ballard, a father figure, appears to save them, as a *deus ex machina*. He is 'A legend. A subject for folk chants.'⁸⁵ Had Jessica perhaps been a mother, the scene at the industrial nursery—if not the entire ending—might have been very different, as it seems unlikely that she would have quite so willingly left her child behind there, or indeed to perish on the imploding planet. It seems fair to assume that they will not recreate such systems once they arrive at their new home, which is a comforting thought.

In contrast to all of this, the ending of *NLMG* brings no hope, only profound grief: the organ-stealing regime continues, and indeed is worsening, with the experimental, almost compassionate ethos of Hailsham no longer in existence. Though they eventually learn the truth, the clones' long lack of basic information ensured that they met many brick walls as they searched for answers and appealed for fairness in connection with their situation. They can do nothing other than accept their fate and await the end of their grim existence as non-rights bearing, commissioned 'creatures.' It is particularly cruel that the activism of their former guardians, aimed at reforming the system (by attempting to convince people that the clones possessed humanity) has all been futile. It seems highly unlikely too that any 'possibles'—whose DNA was used to create the clones—will ever be seen as akin to a long-lost genetic relative or gamete donor, who might want to make contact or express concern for their welfare. The usual strict laws are likely in place to protect the privacy rights of those who have been cloned, to avoid any unwelcome contact from their 'offspring.' Equally, they might be completely unaware that they have been cloned, given that freedom of information, human dignity—and a right to bodily autonomy—are clearly not afforded a very high priority in Ishiguru's bleak alternative universe. Ruth's theories on their origins—that the clones must have come from the sort of people who would never be able to seek them out, or likely to want to—seem accurate. Such reasoning calls to mind

⁸⁴ Crown, Sarah, 'The Second Coming: The Testaments' *Literary Review* (October, 2019). <https://literaryreview.co.uk/the-second-coming-2>.

⁸⁵ *Logan's Run*, p. 42.

the brick-wall thinking behind permanently sealed adoption records, falsified birth certificates, donor anonymity, and parental vetoes on information release. Her earlier pursuit of the woman who might have been her 'possible,' seems not unlike the failed searches or secondary rejections that can plague searching adoptees,⁸⁶ given the secrecy attaching to our origins, and the fear and bias that we can encounter. Ruth never learns the full truth about their rightsless, 'non-souled' existence, having 'completed' her four donations before Kathy and Tommy track down Madame and Miss Emily and wring answers from them. Secrecy and denials of obvious truths will keep this essential industry hidden from the public gaze, and well oiled.

Within these novels, the absence of rights protections for certain vulnerable sections of the population—unwed mothers, enslaved women, their children, older persons, and anyone who can be othered—is a key trope. Law is frequently absent, deficient, or ineffective: it can be drafted or interpreted to enable atrocities which are then framed as completely justifiable acts, done in the pursuit of some 'greater good.' None of this is the sole preserve of the dystopian novel, or of works of literary fiction. These narratives showcase numerous rights abuses that are very far from fictive. For the victims, having a voice is essential, as is being heard and listened to: testimonies, written and oral, are key, as it is these that might spark reform in ways that black letter law-making and politely put pleas for justice cannot. This is perhaps why, in the absence of law or justice, it is the old folkloric rules, warnings, biases, and customs that become most influential. In *Logan's Run*, the rumours of *Sanctuary* prove pivotal, just as Jonas' knowledge of the mythical *Elsewhere*—a sinister, apparently false legend in *The Giver*—turns out to not only be real in the sequel, *Son*, but also key to the eventual reunion between mother and child. Nowhere in the book are these important fables written down however: they rely upon carefully passed down verbal transmissions, spoken in hushed tones. As music is unknown in Jonas' community, they will not be sung, unlike the folklore of Gilead. Where those in power have opted to keep their citizens illiterate or deeply ill-informed as a means of maintaining order, then oral traditions take on added significance. As Aunt Lydia—a former judge, it should be noted—stresses (as she is hiding her own written testimony within a carved-out 'banned' book), 'writing can be dangerous.'⁸⁷ *The Testaments*

⁸⁶ It seems likely that, had she had been permitted to embark upon a search for some record of her creation, she might well have been dissuaded from searching, or advised that all records had been destroyed by fire or flood, given the frequency and regularity with which these events seem to occur in reality.

⁸⁷ *The Testaments*, p. 5.

captures the need for orality and written evidence, making a clear distinction between the various ‘religions’ being taught at the Vidala school (where Wives receive instruction on God and ‘the special sphere of women’⁸⁸) and the unofficial, critical wisdoms ‘passed from girl to girl by means of games and songs.’⁸⁹ These little pieces of folkloric wisdom are chilling but accurate, and thus valuable. They are not delicate however, covering executions by hanging, pregnancy, and the extreme vulnerability of the Handmaids—especially those who dare to attempt escape—and are likely sanctioned by the Aunts who probably thought that such a game ‘contained a beneficial amount of warning and threat.’⁹⁰ The unsung superstitions are the most disturbing however, dealing with the consequences of Handmaids or their babies dying: ‘*If your Handmaid dies in Birth, The curse will follow you over the earth.*’⁹¹ Profound stigma attaches to such an event, as Agnes recalls, when she is partially shunned at school over the death of her family’s Handmaid, despite the fact that the baby had survived. There are significant truths within this folklore. Handmaids are at great risk both during labour and generally, and it is their enslavement and torture—documented by a high-ranking mole—that largely serves to eventually bring down the Gileadean regime.

It is significant that Agnes wonders why, in one of the rhyming games, murder is placed before kissing: ‘*One for murder, Two for kissing, Three for a baby, Four gone missing, Five for alive and Six for dead, And Seven we caught you, Red Red Red!*’ This short verse sets the tone—and reveals the legal parameters—capturing the unpredictable nature of life and law-making under this administration: children and their mothers do go missing, and often their ability to survive is simply down to chance. Escape attempts are not likely to succeed.⁹² The usual tropes of the classic fairy tale—and those that frame the adoptee as a ‘chosen child’—are also present, and merit mention. Agnes’s adoptive mother Tabitha (the Wife of a Commander) explains the girl’s origins to her as having begun in a forest where she’d been walking, before finding an enchanted castle:

⁸⁸ *The Testaments*, p. 106.

⁸⁹ *Ibid.*, p. 106.

⁹⁰ *Ibid.*, p. 107.

⁹¹ *Ibid.*, p. 107.

⁹² It could be interpreted as setting out or predicting the rise and fall of Gilead, with murder representing the initial political coup that led to the regime’s establishment, followed by the many legalised rapes and forced infant relinquishments that underscore its commitment to addressing infertility via the Handmaids; its downfall was then largely brought about by the work of the four undercover, escaping women whose evidence tells the story, and where some of whom do not survive.

...there were a lot of little girls locked inside, and none of them had any mothers, and they were under the spell of the wicked witches. I had a magic ring that unlocked the castle, but I could only rescue one little girl. So I looked at them all very carefully, and then, out of the whole crowd, I chose you.⁹³

The reality of her actual abduction is barely remembered by her, so it can be similarly smoothed over and conflated with Grimm's-worthy imagery and narrative: '...we had to run very fast through the forest to get away from the wicked witches...we hid in a hollow tree. It was very dangerous!'⁹⁴ Offred's account of the incident is much less magical:

She's too young, it's too late, we come apart, my arms are held, and the edges go dark and nothing is left but a little window, a very little window...I can see her going away from me, through the trees which are already turning, red and yellow, holding out her arms to me, being carried away.⁹⁵

Perspective is everything, particularly in relation to adoption and relinquishment narratives. The rumours and myths of *NLMG* are less convoluted, but central to the story, giving the clones false hope of deferring their deaths. There are no alternatives to their situation, as there may be in the other novels. They cannot revolt (*The Testaments*) or escape to a faraway sanctuary (*Logan's Run*), nor can they try to find another home where they might be welcomed as equals (*The Giver/Son*). Even within the relative freedom and contentment of Lowry's various 'Elsewheres'—which did offer sanctuary for Jonas, Gabe, and eventually Claire—there are lingering issues of discrimination against disabled persons and deep stigmas in relation to unwed motherhood. There is also the dark figure of the *Trademaster* who, as evil personified, profits from the misery of those who want or need something beyond that which law or nature has deigned to give them. His philosophy accords with that of the dispassionate AI that rules civilisation in *Logan's Run*, and with Gilead's despotic leaders: the lives of 'others' (such as Handmaids and their babies) can be easily commodified, taken, or traded away in the pursuit of wanted things. Likewise, we could imagine a similar algorithm crafting the inhumane laws that class Ishiguru's clones as inhuman chattel to be abused and harvested at will. Superficially, all of these societies have achieved logical, justifiable solutions to acute or chronic human problems: war, ill-health, ageing, and infertility have largely been 'abolished,' at least

⁹³ *The Testaments*, p. 11.

⁹⁴ *The Testaments*, p. 12.

⁹⁵ *The Handmaid's Tale*, p. 76.

for those members of the population deemed ‘legitimately’ human, and not othered. These systems rely however, much like that of the Trademaster, on the losses and suffering of commodified and dehumanised others, whether mothers or their orphanised, trafficked children. Family life rights—not to mention the right to genetic identity and equality of treatment—become entirely fictive for those who have been othered in this way, in line with the simultaneous removal of other human rights, such as those aimed at preserving life and preventing enslavement and torture. In life as in literary fiction, to be othered because of one’s birth status is to be deemed irreversibly ‘less than,’ and therefore vulnerable to permanent exile from family, ‘respectable’ society (Earner-Byrne 2023),⁹⁶ and basic human rights protections (O’Rourke 2022).⁹⁷ As the next section argues, such abject sociocultural exclusion can also lead to the sort of dehumanising treatment that recalls darkly superstitious or archaic beliefs, and long-held prejudices.

5.6 Ireland’s Dystopic Laws and Customs: Re-defining *Sanctuary*, Falling Short of *Elsewhere*?

...a shameful past in respect of how we dealt with mothers and children ...Part of that shame relates to how the State and religious actors colluded to hide pregnancy and how...some institutions, religious and otherwise, financially profited from forced adoptions and forced labour. In a final ignominy, records detailing family relationships were destroyed or hidden, heaping further distress on many children, who felt abandoned, and on young mothers who were denigrated as fallen women and left with no opportunity to challenge the State or to be involved in their child’s upbringing...This is a significant stain that can never be fully washed away.⁹⁸

Ancestral heritage and the need to transmit inheritances along lawful, legitimate lines of descent clearly continue to matter, in many jurisdictions. As, for

⁹⁶ Earner-Byrne, L., ‘Donnybrook Magdalene Asylum and the Priorities of a Nation: A History of Respectability’ in Coen, M et al. (eds) *A Dublin Magdalene Laundry: Donnybrook and Church-State Power in Ireland* (2023) Bloomsbury: London.

⁹⁷ See further O’Rourke, M., ‘State Responses to Historic Abuses in Ireland: ‘Vulnerability’ and the Denial of Rights’ in O’Donnell et al. (eds) *Redress: Ireland’s Institutions and Transitional Justice* (2022) UCD: Dublin.

⁹⁸ Shanahan, Matt T. D., *Dáil Éireann Debate* (on the Birth Information and Tracing Bill, Thursday, 20 January 2022, Vol. 1016, No. 5 (Second Stage, Resumed). <https://www.oireachtas.ie/en/debates/debate/dail/2022-01-20/31/>.

example, the Final Report of the Commission of Investigation into Mother and Baby Homes (2021) ('The 2021 Report') observed of Ireland's history (with no sense of apparent irony),

Land inheritance was important with farms passing from father to son. *Agricultural concerns with breeding and lineage appear to have applied to marriage partners and children.* When legal adoption was introduced in 1953, the take-up was slowest among the farming community. The rural values of respectability and family standing also existed in cities and towns, though to a lesser extent. (2021 report Para 44, emphasis added).⁹⁹

Fears of unwelcome, illegitimate relatives (and the so-called fallen women who bear them) can even yet generate considerable media-stoked public unease over privacy rights or property inheritance concerns,¹⁰⁰ as seen when legislators decided to allow adoptees some measure of access to their long-sealed birth or adoption records, and permit the excavation of unmarked graves so that infant remains might be identified and repatriated.¹⁰¹ Ireland's long history of institutionalised othering—carried out through systemic, intergenerational 'architectures of containment' (Smith 2007)¹⁰² and child trafficking—affected unwed mothers, their lost and displaced children, and indeed wider society, both within and beyond its national borders. This jurisdiction is especially relevant given that controversial inquiries have been held there recently and that legislative reforms—and some steps towards redress—continue to unfold, albeit gradually. Apologies have been made, in marked contrast to the United Kingdom whose Government refuses to offer an apology, despite the findings and Recommendations of their own Inquiry

⁹⁹ The Final Report of the Commission of Investigation into Mother and Baby Homes (2021) *Executive Summary*, p. 15, para 47 <https://www.gov.ie/en/publication/22c0e-executive-summary-of-the-final-report-of-the-commission-of-investigation-into-mother-and-baby-homes>; See further McGettrick, C et al. (eds) *Ireland and the Magdalene Laundries: A Campaign for Justice* (2021) I.B. Tauris: London, p. 15, on how such 'rural values'—and business acumen—were probably also held by some of the Sisters who oversaw the running of some of the Institutions.

¹⁰⁰ See McQuinn, C., 'Thousands of Illegally Adopted People to have Inheritance Rights from Two Sets of Parents' *Irish Times* (2022) at <https://www.irishtimes.com/news/politics/thousands-of-illegally-adopted-people-to-have-inheritance-rights-from-two-sets-of-parents-1.4775954>. See also how Ontario's proposed legislative reforms (on opening of sealed records) in 2009 were limited by a Supreme Court challenge which resulted in maternal veto rights: *Cheskes v. Ontario* (Attorney General), 2007 CanLII 38387 (ON SC) (available at <https://www.canlii.org/en/on/on/sc/doc/2007/2007canlii38387/2007canlii38387.pdf>). See further <https://archive.ph/20130414173735/http://www.canlii.org/en/on/on/sc/doc/2007/2007canlii38387/2007canlii38387.html>.

¹⁰¹ See The Birth and Tracing Information Act (2022). <https://data.oireachtas.ie/ie/oireachtas/act/2022/14/eng/enacted/a1422.pdf>; and The Institutional Burials Act (2022). <https://data.oireachtas.ie/ie/oireachtas/act/2022/18/eng/enacted/a1822.pdf>.

¹⁰² Smith, James M., *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (2007) Manchester University Press: Manchester.

into forced adoptions and violation of family life in England and Wales (in marked contrast to the devolved Scottish and Welsh administrations).¹⁰³

Recent law and policy developments in Ireland must be evaluated against its long history of forced adoptions, secrecy, and shame. In brief, the church-state oversaw—and attempted to conceal—decades of systemic rights abuses via its networks of workhouses, industrial schools, Mother and Baby Homes,¹⁰⁴ and Magdalene Laundries, some of which also had cross-border elements and impacts.¹⁰⁵ In terms of law reform, the long-awaited Birth Information and Tracing Act (2022), despite its imperfections, at least aimed to permit adoptees access to their birth records, and to thus bring Ireland into line with much of the rest of Europe.¹⁰⁶ Formal investigations, though controversial,¹⁰⁷ have led to a limited redress scheme.¹⁰⁸ It is the testimonies

¹⁰³ The Report of the Joint Committee on Human Rights ‘*The Violation of Family Life: Adoption of Children of Unmarried Women 1949–1976*’ (England and Wales) (at <https://committees.parliament.uk/publications/23076/documents/169043/default/>). Northern Ireland is, at the time of writing, still in the process of formally investigating abuses and gathering survivor testimonies.

¹⁰⁴ As Coen et al. (2023) note, many survivors of the institutions object to the use of the word ‘homes’ in connection with these Institutions (Coen et al., p. 14).

¹⁰⁵ On Northern Ireland see McCormick, L., et al. ‘*Mother and Baby Homes and Magdalene Laundries in Northern Ireland, 1922–1990*’ (Report For the Inter Departmental Working Group on Mother and Baby Homes, Magdalene Laundries and Historical Clerical Child Abuse) (2021) which highlights the systemic, cross-border aspects of infant-trafficking, and the links between the various types of institution: ‘...it is clear that victims of sexual abuse were moved on to a Good Shepherd St Mary’s home, to work in its laundry, after they gave birth in a mother and baby home’ (p. 5) (Executive Summary available at <https://www.health-ni.gov.uk/sites/default/files/publications/health/doh-mbhl-exec-summary.pdf>, accessed 2 February 2022). See also *The Report of Historical Institutional Abuse Inquiry* (2017) (‘HIA’) which found little evidence of any adherence to The Voluntary Homes Regulations (1952) with zero inspections of premises carried out by the state. The HIA stressed that ‘the Good Shepherd Sisters and the Ministry of Home Affairs/ Department of Health and Social Services and the Social Work Advisory Group’ had contributed to a ‘systematic failure’ (p. 6). <https://www.hiainquiry.org/historical-institutional-abuse-inquiry-report-chapters>.

¹⁰⁶ Advice sessions are required where an adoptee’s birth relative has registered a no-contact preference. See also Aspell, J., ‘Ireland’s Birth Information and Tracing Act: Reconciling the Right to Identity’ in *EJIL:Talk! Blog of the European Journal of International Law* for analysis of the reforms and their compatibility with Article 8 of the European Convention on Human Rights (<https://www.ejiltalk.org/irelands-birth-information-and-tracing-act-reconciling-the-right-to-identity/>); Adoptee Voices, ‘*The Aitheantas Report: EPRS on Adoptee Rights*.’ <https://cdn.adopteevoices.ie/references/EPRS+on+Adoptee+Rights.pdf>. An earlier iteration of the 2022 Act—The Adoption (Information and Tracing) Bill (2014)—had it been enacted, would have required adoptees to provide a written guarantee that they would not attempt to contact relatives. It also would have permitted ‘natural parents’ to apply for a veto on information release.

¹⁰⁷ The Final Report of the Commission of Investigation into Mother and Baby Homes (2021) *Executive Summary*, p. 15, para 47. <https://www.gov.ie/en/publication/22c0e-executive-summary-of-the-final-report-of-the-commission-of-institution-into-mother-and-baby-homes>; See further McGettrick, C. et al. (eds), ‘*Ireland and the Magdalene Laundries: A Campaign for Justice*’ (2021) I.B. Tauris: London, p. 15, on how such ‘rural values’—and business acumen—were probably also held by some of the Sisters who oversaw the running of some of the Institutions.

¹⁰⁸ See The Mother and Baby Institutions Payment Scheme Bill (2022). https://data.oireachtas.ie/ie/oireachtas/bill/2022/97/eng/ver_b/b97b22d-green-release.pdf.

of the survivors of Mother and Baby Institutions that demand the most attention however, serving as a memorial to decades of abuse and wrongdoing and perhaps as a warning to future law and policymakers of just how easily chronic rights violations might be seen as tolerable or indeed necessary by wider society. The accounts do not make for easy reading and would not be out of place in a dystopian-set novel, recalling as they do the sharply stigmatising prejudices of earlier eras that were aimed at unmarried mothers and illegitimate children.¹⁰⁹ One extract from the 2021 Report is typical:

...one mother who had taken one of the dirtier jobs, that of sluicing nappies, so she could be nearer to her daughter in the nursery, was thereby close to her for two years until her baby was transferred to a secondary nursery where she was no longer allowed to see her. She told the Committee that she broke the rule by sneaking in to see her daughter only to be horrified at seeing her 'in a completely soiled condition' and took it upon herself to clean and change her. Her transgression was discovered and she was threatened with a transfer to a laundry. ...she and her daughter survived many ordeals, not least an outbreak of gastroenteritis amongst the babies, many of whom died.¹¹⁰

As one survivor stated,

(My mother) suffered terrible in there. She saw so many babies dying - no crying, no funeral, no parents arriving. She would breastfeed other babies and would steal milk from the kitchen for her own baby...¹¹¹

As in the dystopian novels discussed above, infanticide was also rife: the Donnybrook Magdalene Laundry in Dublin, for example, saw some female offenders entering it via the criminal justice system—possibly for life—as part of the terms of their probation or suspended sentence, for such crimes as manslaughter, murder, or concealment of a birth.¹¹² Illegitimacy of the infant might well have 'shaped the profile' of women on trial for killing their

¹⁰⁹ The practical difficulties of gathering survivor testimonies is evidenced by the widespread nature of substitutive care in Ireland in the past: as the 2021 Report (Chapter 11, p. 76) stated 'A comprehensive account of the outcomes for the children of unmarried mothers, who were not raised by their family, would require the integration of the histories of children in industrial schools (especially those sent at an early age to junior industrial schools); of boarded out children, of those placed at nurse, and those who were adopted.' <https://assets.gov.ie/118565/107bab7e-45aa-4124-95fd-1460893dbb43.pdf>.

¹¹⁰ Ibid., p. 47.

¹¹¹ Ibid., p. 53.

¹¹² Black, Lynsey, 'Women of Evil Life' Donnybrook Magdalene and the Criminal Justice System' in Coen, M. et al. (eds), *'A Dublin Magdalene Laundry: Donnybrook and Church-State Power in Ireland'* (2023) Bloomsbury: London, p. 188.

child.¹¹³ The high infant mortality rate for such babies is telling: ‘in some years during the 1930s and 1940s, over 40% of ‘illegitimate’ children were dying before their first birthday in mother and baby homes.’¹¹⁴ It was found later that

... 9000 children died in the institutions under investigation - about 15% of all the children who were in the institutions. In the years before 1960 mother and baby homes did not save the lives of ‘illegitimate’ children; in fact, they appear to have significantly reduced their prospects of survival. The very high mortality rates were known to local and national authorities at the time and were recorded in official publications.¹¹⁵

O’Donnell has repeatedly argued that ‘the Irish State was deeply implicated,’ even though some quarters pleaded apparent ignorance, to ‘deny ...any wrongdoing on the part of the Irish establishment.’¹¹⁶ Significantly, the 2021 Report noted that,

No matter what congregation or religious order was in charge, or where its institutions were located, a remarkable similarity of regimes in most homes was described by the stream of individual witnesses of all ages and from all parts of the country who came to the Confidential Committee.¹¹⁷

Other jurisdictions had similar issues with truth recovery and fact-finding. As an Investigation into Canadian Mother and Baby Homes (2017) discovered,

The institutions responsible for carrying out [forced adoptions] have either disappeared over the years, such as government departments whose names and mandates have changed multiple times in the interim, or are reluctant to admit their participation, such as many of the religious denominations that operated maternity homes for unwed mothers. (*The Shame is Ours* [2017])¹¹⁸

¹¹³ Ibid.

¹¹⁴ *op. cit.*, p. 15, para 47.

¹¹⁵ Ibid., para 12. The Report noted also that, frequently, ‘No register of burials was kept and it is likely that most of the children who died in Tuam are buried inappropriately in the grounds of the institution’ (para 85).

¹¹⁶ ‘...that is, the symbiotic governing dyad of the hierarchy of the Catholic Church and senior officials and public representatives.’ O’Donnell, K., ‘Official Ireland’s Response to the Magdalene’s Laundries: An Epistemology of Ignorance’ in O’Donnell, K. et al. *Redress: Ireland’s Institutions and Transitional Justice* (2022) UCD Press: Dublin (p. 285).

¹¹⁷ *op. cit.*, p. 52.

¹¹⁸ *The Shame is Ours* (2017), p. 7, available at <https://sencanada.ca/en/info-page/parl-42-1/soci-adoption-mandate/>.

Ireland's McAleese Report (2013) (also termed The Inter-Departmental Committee ['IDC'] Report)¹¹⁹ is relevant also, given that the authors were tasked with investigating the facts (rather than the *extent*, significantly) of Irish State involvement in the Magdalene Laundries (McGettrick et al. 2021).¹²⁰ It suggested somewhat equivocally that there could be 'no single or simple story of the Magdalene Laundries' and insisted that 'some modern terms such as "victim" or "survivor" were better avoided, so as not to cause any offence or distress.'¹²¹ It did at least concede that the system was 'for many years characterised primarily by secrecy, silence and shame.'¹²² Although the church-run Magdalene Laundries were not Mother and Baby institutions, they were often closely linked to them in some way, given that some unwed mothers might have spent time there either before or after having had their babies. There was clearly some level of church-state complicity via the policy of transferring 'women from State-funded Mother and Baby Homes and County Homes to Magdalene Laundries.'¹²³ It is noteworthy too that, though it was apparently seen as preferable to going to prison, entering the Laundries brought a much deeper, longer-lasting stigma for the women concerned. Termed 'Penitents,' their unfortunate situation was regarded as largely self-inflicted having apparently arisen more from (female) sinfulness rather than criminality. As Hogan (2019) has argued,

The beliefs and stigmas that underpinned the mother-and-baby homes and the Magdalen laundries all existed in Ireland long before the creation of the independent Irish state. The institutional infrastructure, too, dates back centuries. None of the building blocks of the shame-industrial complex was intrinsically Irish or intrinsically Catholic. But independent Catholic Ireland brought them to a sort of dark perfection.¹²⁴

The interlinked systems and beliefs that enabled this level of dehumanising othering—that removed all rights to dignity, identity, or family life—hark back not only to the archaic, folkloric views on sin (discussed in chapter two) but also echo the faith-led, zealous political ethos of the various dystopian

¹¹⁹ *The Report of the Inter-Departmental Committee to Establish the Facts of State Involvement with the Magdalen Laundries* ('The McAleese Report' also known as the IDC Report) (2013), available <https://www.justice.ie/en/JELR/Pages/MagdalenRpt2013>.

¹²⁰ See further McGettrick et al., *op. cit.*, n, Chapter 4 for a detailed, must-read account of the lead-up to the Government Apology in 2013, and its aftermath.

¹²¹ *op. cit.*, 119, p. 2.

¹²² *Ibid.*

¹²³ McGettrick et al., *op. cit.*, p. 57.

¹²⁴ Hogan, C., *'Republic of Shame: How Ireland Punished 'Fallen Women' and Their Children'* (2019) Penguin: Ireland, p. 29.

societies described here. The Gileadean regime (in *The Handmaid's Tale*) is especially apt perhaps: their leaders similarly emphasised the need for visibly devout faith, and for patriotic social conformity in the wake of political revolution. They too justified the 'confinement' and brutal chastening of certain women as being somehow in their own best interests—as atonement for 'sin' or as a preventative measure against future transgressions—but also framed the process as serving a greater good that included wider moral or social reform and a clear warning to other women to behave appropriately. Babies were likewise commodified and forcibly adopted (or systemically neglected or exposed).¹²⁵ Surrogacy and adoption were lucrative industries, in life as in fiction.

Handmaids who delivered and handed over healthy infants in Atwood's Gilead were saved from a potentially fatal exile to the Colonies later in life: they clearly would have to quickly forget about the child they had given birth to and perhaps nursed. Again, there are echoes here of some of the testimonies of mothers who had resided for a while, with their babies, in state or church-run institutions, before having to relinquish them. Some quasi-Gileadean logic also appears in the 2021 Report, in respect of the State's initial denials of culpability, where it is stated that those who took power at the start of the twentieth century were quite busy setting up a 'provisional government ... [and] creating the administrative systems for the new Irish Free State and fighting a civil war.'¹²⁶ Clearly, they had too little time or inclination to check what was happening within the various institutions that were then housing, holding, or quietly disposing of their most vulnerable citizens, within or beyond national borders. It is noteworthy too that the 2021 Report suggested that Ireland's networks offered unwed mothers (and their children) 'a refuge - a harsh refuge in some cases - when the families provided no refuge at all.' [1].¹²⁷ Placing blame on the families in this manner shifts it away from those in power, who are in charge of ensuring that a fair and just society exists in the first place and are tasked with drafting appropriate laws and policies to protect those at risk.

¹²⁵ See further Shannon, G., *Report of the Special Rapporteur on Child Protection, 'Human Rights Issues at the Former Site of the Mother and Baby Home, Tuam, Co. Galway'* (2018). <https://assets.gov.ie/25217/0abb576368b14e2081c447b417544fb2.pdf>.

¹²⁶ The 2021 Report, *op. cit.*, para 57.

¹²⁷ It also suggested that 'Women were admitted to mother and baby homes and county homes because *they failed* to secure the support of their family and the father of their child' (emphasis added), para 5.

The discoveries in Ireland and elsewhere¹²⁸ of unmarked, often undocumented, mass infant graves, some with uncoffined remains, recalls certain practices seen in some of the darkest folkloric tales. Infanticide via exposure, for example, often saw an absence of burial rites for the neglected infant. Conversely, ‘protective’ magical customs might be needed, especially if illegitimacy had been a factor.¹²⁹ In relation to Ireland, Carroll (2023) summarises the most high-profile case where the bodies of hundreds of infants were discovered in an apparently disused septic tank¹³⁰:

The home in Tuam was part of a network of institutions for unmarried mothers and their children that doubled as orphanages and adoption agencies for much of the 20th century. They were run by religious orders with sanction by the state, which overlooked deprivation, misogyny, stigma and high infant mortality rates.¹³¹

Burial customs for unwanted children are not specifically referred to in the dystopian novels discussed above, with one notable exception in *The Handmaid’s Tale*.¹³² Arguably, this might be because this particularly disturbing aspect of fairly recent human history—the callous disposal of the bodies of unwanted infants without ceremony or dignity—is perhaps simply too horrific to be included in even the most brutal of dystopian narratives. Ireland’s Institutional Burials Act (2022) is aimed at truth recovery via the excavation and investigation of remains via DNA testing.¹³³ Concerns and

¹²⁸ On Canada, see also the Report into Cemeteries by Hamilton, S, ‘Where Are the Children Buried?’ (2021), p. 42. <https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/05/AAA-Hamilton-cemetery-Final.pdf> on how the ‘enduring painful legacies’ of forced adoption can equate to ‘cultural genocide.’ See also Canada’s Truth and Reconciliation Commission Report (2015) *Honouring the Truth, Reconciling for the Future* Summary, available at: https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Executive_Summary_English_Web.pdf; See also https://sencanada.ca/content/sen/committee/421/SOCI/reports/SOCI_27th_e.pdf; and <https://www.theguardian.com/world/2022/jan/26/nearly-100-potential-human-burials-discovered-british-columbia-school-indigenous-people>.

¹²⁹ See also Dennehy, Emer, ‘What Damned You?’ Changelings, “Mylingar” and Other Dead Child Traditions’ *Archaeology Ireland* (2016) 30 (3), pp. 21–25 on certain Irish burial traditions which might see, for example, unbaptised children’s remains placed in ‘...privies, dunghills and various other public places’ and where ‘the practice of the prone (face down) burial of infants’ might occur, where illegitimacy was a factor (to stop the father from fathering more children).

¹³⁰ See Corless, C. and Linehan, N., ‘Belonging: A Memoir of Place, Beginnings and One Woman’s Search for Truth and Justice for the Tuam Babies’ (2021) Hachette, Ireland; Corless, C., ‘Belonging: One Woman’s Search for Truth and Justice for the Tuam Babies’ (2021) Hachette: Ireland.

¹³¹ Carroll, R., ‘A Stain on Ireland’s Conscience’: Identification to Begin of 796 Bodies Buried at Children’s home’ (2023) *The Guardian*. <https://www.theguardian.com/world/2023/jun/25/a-stain-on-irelands-conscience-tuam-home-for-unmarried-mothers-gives-up-grimmest-of-buried-secrets>.

¹³² Brief reference is made to the disposal of the bodies of the traitorous or otherwise defective *Unwomen* (p. 216) in *The Handmaid’s Tale*: ‘...they burn you with the garbage ...’ It seems fair to assume that so-called *Unbabies* might be similarly disposed of.

¹³³ <https://www.oireachtas.ie/en/bills/bill/2022/23/> (accessed 2 October 2022).

questions have been raised however about privacy rights, the nature, purpose, and remit of such reparative action, and whether certain processes are maybe seeking to somehow unacceptably ‘re-write the past,’ rather than simply memorialising it in some respectful way.¹³⁴ As Canada’s Truth and Reconciliation Commission (2015) noted, ‘histories and legacies should not be forgotten,’¹³⁵ especially given ‘the worldwide spread’ of such institutions¹³⁶ and the still evident frameworks of ‘epistemic injustice’ that they crafted, perpetuated, and then attempted to keep hidden.¹³⁷ Truth recovery mechanisms can at least challenge lingering denials of culpability and help highlight the intergenerational impacts of chronic and systemic ‘dishonesty and shame’ (Palmer 2022).¹³⁸

Formal apologies (from state or church) have been forthcoming in Ireland and other jurisdictions,¹³⁹ and though these are not insignificant, it should be noted that such gestures can often fail to ‘move beyond rhetoric’ or a basic expression of regret.¹⁴⁰ The United Kingdom’s Joint Human Rights Committee Report (2022) on *The Violation of Family Life: Adoption of Children of Unmarried Women 1949–1976 in England and Wales* (‘JCHR Report’) has yet to spark a state apology,¹⁴¹ or indeed the acceptance of blame on the part of the state for the questionable actions of some NHS staff and social

¹³⁴ Murray, J., ‘Does the Institutional Burials Act Respect the Dead or Bury Our Shame?’ (2022) *Irish Legal News* Murray argues that ‘we should not try to re-write the past. It would be better to mark the spot and say that those people will never be forgotten.’ See further Ní Aoláin, Fionnuala, ‘The Inner and Outer Limits of Gendered Transitional Justice’ in O’Donnell et al. (2022) *op. cit.*, Ch 11, on the need to avoid ‘overconfidence regarding what justice can actually be achieved in practice’ (p. 147).

¹³⁵ *op. cit.*, p. 6. It seems fair to suggest that DNA testing could potentially reveal unexpected paternities and perhaps evidence rapes, incest, or institutional abuse.

¹³⁶ Smith, *op. cit.*, p. xv.

¹³⁷ McGettrick et al., *op. cit.*, p. 2.

¹³⁸ Palmer, C., ‘It Steadies Me to Tell These Things: Memoir and the Redemptive Power of Truth-Telling’ in O’Donnell et al. (eds) *Redress* (2022) *op. cit.*, p. 224. See also Palmer, C., ‘An Affair with My Mother: A Story of Adoption, Secrecy and Love’ (2017) Penguin: London; Andrews, V., ‘White Unwed Mother: The Adoption Mandate in Postwar Canada’ (2018) Demeter Press: Ontario.

¹³⁹ See, for example, Fronck, P. and Cuthbert, D., ‘Apologies for Forced Adoption Practices: Implications for Contemporary Intercountry Adoption’ *Australian Social Work* (2013) 66 (3), pp. 402–414, p. 417. See further the Report of the Australian Senate’s Community Affairs References Committee, ‘Commonwealth Contribution to Former Forced Adoption Policies and Practices’ (2012). https://www.aph.gov.au/parliamentary_business/committees/senate/community_affairs/comple_red_inquiries/2010-13/commcontribformerforcedadoption/report/index.

¹⁴⁰ Short, D., ‘When Sorry Isn’t Good Enough: Official Remembrance and Reconciliation in Australia’ *Memory Studies* (2012) 5, pp. 293–304.

¹⁴¹ See further Sherwood, H., ‘Victims of Forced Adoption Step Up Pressure for UK Government Apology’ *The Guardian* (May 2023). <https://www.theguardian.com/society/2023/may/09/victims-of-forced-adoption-step-up-pressure-for-uk-government-apology> on the Scottish and Welsh apologies.

workers during that time period.¹⁴² A very belated Government response did at least acknowledge the harms that can arise from forced adoptions, and the violations of family life that had obviously occurred.¹⁴³ That they chose from the offset to examine violations of family life rather than family life *rights* is significant: it seems unlikely that any form of redress will be forthcoming any time soon. As with the testimonies of many Irish survivors, the written and oral evidence of the mothers and adoptees from this neighbouring jurisdiction make for difficult reading and paint a triggering picture of the sorts of rights violations (e.g. torture, inhuman and degrading treatment, slavery) that are more commonly associated with dystopian laws, policies, and practices:

...on the eighth day...he was not there. The nurse midwife who was there said, "We told you not to get close and you did. ...she pointed to another building and said, "He's in there. His new mummy is coming for him and you'll never see him again. Now you come with me into the bathroom."... In the bath she got my breast and said, "I'm getting rid of this milk because you'll not need it."¹⁴⁴

Another respondent stated that,

When my daughter was born, one of the nurses said, "*This baby is flagged for adoption*" and insisted that she would take her away immediately. I begged and pleaded with her not to do that and held out my arms so I could hold my child. She walked back into the room, past the end of where I lay and placed my child out of reach, many feet from me.¹⁴⁵

The JHRC Report (2022) did, rightly, stress the non-consensual nature of many of the forced adoptions of this era and acknowledged the intergenerational harms associated with framing maternal relinquishments as always having been consented-to. Rather than using the term 'gave up' their babies,

¹⁴² The Report of the Joint Committee on Human Rights, *The Violation of Family Life: Adoption of Children of Unmarried Women 1949–1976 (England and Wales)* at <https://committees.parliament.uk/publications/23076/documents/169043/default/>; on Scotland, and a useful NGO response to the above Report, see also <https://movementforanadoptionapology.org/jchr-report-15th-july-2022/>.

¹⁴³ The then Minister Zahawi's insistence upon blaming the prevailing culture of the time (rather than the state) for the actions of social worker and NHS staff, and for the resultant infringements of the right to family life, received a less than warm response from the adoptees and mothers present: <https://committees.parliament.uk/writtenevidence/108766/default/>.

¹⁴⁴ <https://committees.parliament.uk/oralevidence/9954/pdf/> HC 748 (16 March 2022), p. 7. Other testimony described how contact between mothers and babies was minimised: "I wasn't allowed to see, hold or feed my baby", said one mother (p. 119). Another saw her baby "for a few hours after she was born" and then once more on the day she was discharged (p. 120) Some mothers were able to breastfeed their babies (p. 121) but others were only able to bottle feed (p. 122) "as it was considered that breastfeeding would create too strong a bond," p. 18, para 61.

¹⁴⁵ <https://committees.parliament.uk/writtenevidence/39803/pdf/>.

the authors inserted the term ‘put up for adoption’ to underscore the mothers’ lack of choice or agency. They noted too that many of the women felt they were often in receipt of a ‘double dose’ of shaming¹⁴⁶: in addition to being an unmarried mother, they were also then being condemned for apparently not having wanted to somehow try and keep their child. The impacts on the adoptee of all of this was also highlighted, in the sense that they might simply assume, in error, that their mother had easily rejected or quite happily relinquished them. That said, in terms of navigating the difficulties of reunion—or secondary rejections—it is often useful for adoptees to have glimpses of some of the dark, dystopian truths that they might not otherwise see. As one Irish adoptee told the Committee (to the 2021 Report), she was at last able to grasp why the subsequent relationship between herself and her mother had not worked out: ‘She had walked into hell, had decided to blame me for her being there, and could not accept me.’¹⁴⁷

5.7 Conclusion

...a better world that truly recognizes human rights will transpire only when we empathetically descend to the Other’s hell and then reawaken to the atrocities of the present.

—Dodson, D.J., ‘*We Lived in the Blank White Spaces*’: Rewriting the Paradigm of Denial in Atwood’s *The Handmaid’s Tale*.’ *Utopian Studies* (1997) 8 (2), pp. 66–86, p. 67¹⁴⁸

The need to eradicate or deny illegitimacy is not really an issue within any of the dystopian texts discussed above, possibly because nearly everyone in them has been adopted, trafficked, or raised in some form of substitutive care, with their genetic ancestries rendered completely irrelevant. Illegitimacy is therefore no longer the main pathway to otherness via birth status: other ways to dehumanise ‘surplus’ beings have been devised within these fictional yet familiar societies, to manage or subjugate their populations. Such profound otherings can easily cause the sort of rights exile that denies family life,

¹⁴⁶ P. 11. “By saying mothers gave up their babies for adoption, there has been a perpetuation of a view that they didn’t care or love their babies enough to keep them and were content to give them to another family” (p. 78).

¹⁴⁷ *Report of the Confidential Committee to the Commission of Investigation into Mother and Baby Homes* October 2020 (Confidential chapter, p. 50).

¹⁴⁸ Dodson, Danita J., “*We Lived in the Blank White Spaces*’: Rewriting the Paradigm of Denial in Atwood’s *The Handmaid’s Tale*’ *Utopian Studies* (1997) 8 (2), pp. 66–86.

original identity, ancestral heritage, and access to information. Infanticide, therefore, still happens here, for example, with imperfect babies being termed ‘Shredders’ in *The Handmaid’s Tale* and deemed ‘Inadequate’ in *The Giver*. Though not explicitly seen in *Logan’s Run*, there does seem to be a suspiciously low number of imperfect citizens.¹⁴⁹ Given their Malthusian need for euthanasia at 21, it might well be the case that some form of population control perhaps occurs at the beginning of their stunted life cycle (It is hard to imagine the governing AI’s algorithm having an issue with such a pragmatic approach). The *Sleeprooms* in the Nurseries certainly have the capacity to smother any child who is seen as surplus—or unable to quietly settle—recalling some of the testimonies of those unwed mothers who felt driven to kill their newborns rather than reveal their existence and suffer the consequences of raising an illegitimate child.¹⁵⁰ It might be argued further that *NLMG* touches upon the concept of exposure, as the clones, by virtue of being classed as soulless, are deliberately placed far outside of the society that commissioned them, having to remain there until they are summoned to be incrementally sacrificed to cure the various physical ills of humanity. An unexpected appearance by them can cause deep revulsion and fear, just as if they were evil changelings, doppelgängers, or the vengeful spirits of abandoned or murdered children (all of which are possible interpretations of their former carers’ responses to them at various points in the book). Their unique form of dehumanising otherness—social or societal ‘illegitimacy’—arises not from having been born to an unwed mother, but through having been subjected to the sort of complete abandonment that can profoundly other, both prior to conception and long after death. This sort of othering can deny those who are rejected the most basic of human rights and humanising rituals, such as dignified burial. It would not be surprising to discover that these abused clones, once they have completed the gradual donation of their vital organs, are then consigned without ceremony to unmarked graves, or perhaps incinerated, with no markers or memorial of their sacrifice or altruistic suffering.¹⁵¹ As the previous chapters have argued, once a person has been so fully othered, it can be very difficult—if not impossible—to gain or regain certain rights, especially those which rely upon the demonstrable presence of some recognised form of family life, beyond that of ‘mere’ genetic connection.

¹⁴⁹ There are feral groups of parentless young children surviving beyond the city limits, which would suggest that they might have been born in secret or were left there via abandonment or a policy of exposure. Interestingly, they adopt the harsh behavioural norms of the older citizens, exiling those who they deem ‘old’ and therefore other.

¹⁵⁰ See Smith (2007) *op. cit.*, p. 61.

¹⁵¹ See further <https://www.tuamhomesurvivors.com/press-releases> (accessed 12 January 2022).

If othering and orphanisation are understood as pathways to dehumanising exile, which includes a loss of rights-bearing status, then—for adoptees and foundlings—this can mean that reunion is likely to be impossible or highly flawed. Lowry and Atwood both end their sequels with barely glimpsed, brief ‘fairy tale’ mother–child reunions, using them to mark the final defeat of evil regimes, rather than, understandably perhaps, starting points from which they might explore issues of law reform or redress. The characters’ reward for challenging or escaping the system is wish-granted reunion: as chapter two argued, the concept of the fairy tale ending can sometimes be misleading, in terms of not always bringing about Disney-esque happiness, and not having changed predominant community beliefs or mindsets, and not creating the conditions needed to prevent future inequities and spark law reform. Law’s purpose—both in the novels and in real life—is often to enable then justify certain rights violations on the basis that these are unavoidable, necessary, and proportionate responses aimed at achieving some greater good. For example, if the best interests principle were to be applied to some of the situations in the novels, the removal of babies from their mothers could make weirdly cruel sense. In both *Logan’s Run* and *Son*, it might be argued that the teenage mothers in question were unable or ill-equipped to raise their children, or indeed that they might well not have wanted to, especially where conception and birth were brutally forced upon them. Similarly, if some sort of rights framework were to be devised for these dystopian societies, it seems likely that the privacy rights of genitors or adoptive parents might well easily outweigh those of the adoptee, as they have tended to do in reality. Even where positive sociocultural and legal changes have happened (opened birth and adoption records, greater levels of contact post-adoption, increased understanding of the complexities of relinquishment, adoption, and reunion) it is still possible to identify lingering or unconscious biases and fears that highlight the ‘othernesses’ of adoption and hinder the realisation of certain rights, to perpetuate unequal treatment. Requiring adoptees, for example, to undergo compulsory advice or counselling sessions before releasing information to them to ensure that they will not violate the privacy rights of their parents by initiating unwanted contact, suggests that we are perhaps not to be trusted. Equally discriminatory are those redress schemes that have excluded some survivors from their remit on the basis of their not having resided for a sufficient period of time in certain institutions.

The losses of home, family, and private life rights underpin the wider workings and sociocultural impacts of the regimes portrayed in all of these novels. Orphanisation has been used to break—or prevent—ties of kinship and erase genetic connections and natal identities. Clearly, unsanctioned

familial ties might be perceived as dangerous things, as they were in the past, especially if they have the potential to undermine the workings of a nascent state, as seen in Gilead where non-consensual surrogacy was at the heart of its mission of moral reform and political revolution. Their industrial yet private trafficking of babies—which began prior to their conception—required no legal formalities to transfer parental responsibility to adoptive parents and displace the child from their genetic origins (much like the ‘black market’ adoptions of the twentieth century, and the informal arrangements of earlier eras). The subjugation and permanent othering of an entire class of so-called fallen women, spurred on by patriotism and religious fervour, is sadly, not the sole preserve of fictional dystopian regimes. The systems of procreation seen in *The Giver/Son*, *The Handmaid’s Tale*, and *Logan’s Run* shares certain characteristics with the forced adoption processes of several jurisdictions as seen throughout much of the twentieth century, with unwed mothers erased from the picture, stigmatised, exiled, and perhaps prevented from seeing or holding their babies, or ever knowing what became of them. Their children—adoptees, who may or may not have been told the truth about their origins—were commodified and trafficked across familial borders. As such, they inherit a condition of ‘rightslessness’ from their mothers. The clones’ inability to access information about themselves (*NLMG*) can be seen as akin to that of the adoptee or donor-conceived person who has hit a brick wall of sealed records, donor anonymity, or parental veto on information release. Such scenarios challenge the assumption that a right to family life is a robust, meaningful concept: rather, it can easily become little more than privilege, limited by strict adherences to whatever laws, customs, or norms are currently predominant in any given society (married motherhood, legitimate birth status). These novels, by drawing upon scenarios that are clearly grounded in some aspect of reality, also question the reach, remit, and effectiveness of human rights protections.

As McAlinden (2021) has argued of apologies, though they ‘cannot undo past wrongdoing,’ do often represent ‘an attempt at humanisation—they can at least begin to redress the ‘moral vulnerability’ of victims by holding individual perpetrators and institutions to account and correcting the public record about the past...’¹⁵² In addition to [re]humanising victims, apologies can at least mark the start of a ‘new chapter,’ by reinforcing the ‘pastness’ of

¹⁵² McAlinden, A. M., ‘Apologies as ‘Shame Management’: The Politics of Remorse in the Aftermath of Historical Institutional Abuse’ *Legal Studies* (2021), pp. 1–22, p. 21. As the UN recently noted (in respect of systemic racist abuse in Ireland) ‘the State apology is an important element of the restorative justice process, but it is not enough.’ <https://www.ohchr.org/en/statements/2022/09/ireland-un-experts-call-adequate-redress-systemic-racism-and-racial>.

certain practices that ‘necessitate regret.’¹⁵³ That said, where apologies appear to consign rights violations to the past—so that they are seen as merely ‘folkloric’ relics of a time perceived as being long over and done with—they can lead to the sort of uneasy silences that might wrongly suggest that a full, satisfactory resolution has somehow been achieved.¹⁵⁴ These silences can also make it look like certain rights violations can never recur, which is seldom the case. This is an especially dangerous assumption in an era where forced adoptions have recently been classed as war crimes,¹⁵⁵ and where there are still ongoing concerns over unethical practices in international adoption, gamete donor anonymity, and commercial surrogacy.¹⁵⁶ Likewise, even formal apologies can become quite meaningless in the absence of legislative reform or useful mechanisms for redress. In respect of forced adoptions, access to accurate information is essential: truth recovery demands authentic narratives. Identity rights should not be framed as mere privileges, but as a core aspect of human dignity: they should not be easily or automatically outweighed by privacy interests. Moreover, redressive measures have tended to fail where they inadvertently embed or worsen prejudices and discriminatory treatment.¹⁵⁷ For those who seek justice in this area (in the form of truth recovery, law reform, apologies, reparations or repatriation) the limited options are similar to those from which dystopia-set protagonists must choose: a defeated, near-grateful acceptance of an indelible otherness (*NLMG*), complete escape to another jurisdiction (*The Giver*, *Logan’s Run*), or sustained, underground resistance in the hope of eventual change (*The Handmaid’s Tale*). Across all of these works, the gathering and preservation of authentic testimonies, oral and written, are key, not just to documenting evidence of rights violations, but

¹⁵³ Fronek P and Cuthbert D ‘Apologies for Forced Adoption Practices: Implications for Contemporary Intercountry Adoption’ *Australian Social Work* (2013) 66 (3), pp. 402–414, p. 417, predicting that future apologies are likely to be required over continuing practices in inter-country adoption.

¹⁵⁴ Ibid.

¹⁵⁵ See further OHCHR, ‘Report on The Human Rights Situation in Ukraine’ (2023). <https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2023/23-03-24-Ukraine-35th-periodic-report-ENG.pdf>; ICC, ‘Situation in Ukraine: ICC Judges Issue Arrest Warrants Against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova’ (2023). <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and-maria-alekseyevna-lvova-belova>; Amnesty International, ‘Ukraine: “Like a Prison Convoy”: Russia’s Unlawful Transfer and Abuse of Civilians in Ukraine During ‘Filtration’ (2022). <https://www.amnesty.org/en/documents/eur50/6136/2022/en/>.

¹⁵⁶ Fronek, P., ‘Global Perspectives in Korean Inter-country Adoption’ *Asia Pacific Journal of Social Work and Development* (2006) 16 (1), pp. 21–31, p. 21.

¹⁵⁷ See, for example, Ireland’s unsuccessful Adoption (Identity and Information) Bill (2014) which, amongst other things, aimed to ‘allow adopted persons to obtain a certificate of birth and to access information relating to their identity, origins and the circumstances of their birth, Subject to reasonable safeguards to address the position of the natural parents and of the adoptive parents (emphasis added).’ https://data.oireachtas.ie/ie/oireachtas/bill/2014/103/eng/ver_a/b103b14s.pdf (accessed 21 January 2022).

to persuading an often oblivious (or deliberately unseeing) population that such things did happen and might easily happen again. Narratives of injustice need to be told, documented, listened to, and addressed, to prevent their repetition, and to aid the creation of genuinely just *Elsewheres* and durable *Sanctuaries*.¹⁵⁸ Given that some of the Irish survivors' testimonies never made it into the 2021 Report,¹⁵⁹ it seems fair to concur with Breathnach's analysis of how easily and often law, 'history and memory are pitted against one another in a very unfair, and highly gendered fight. Written records of the powerful trump the spoken words of survivors.'¹⁶⁰

This book has sought to argue that meaningful sociocultural change requires more than superficial, belated tweaks to law and policy. As Hipchen (2018) has observed, adoption has a long history of 'intersection with global and historical inequities,'¹⁶¹ with its narratives even yet largely controlled by 'politicians and government bodies.'¹⁶² There is a limit therefore to what jurists and lawyers might be able to achieve when seeking to prevent the sort of otherings and inequalities that can arise from deliberate orphanisation, which can in turn generate the types of stigma that serve to permanently exclude and dehumanise.¹⁶³ Works of literary fiction are well placed however to capture and convey to a wide audience some of the harms and injustices associated with adoption's many losses: as Yngvesson (2010) noted, adoption is itself a legal fiction, simultaneously hiding our ancestries while leaving behind unsettling traces of origin.¹⁶⁴ Likewise, certain outcomes and endings may be presented as gains to be celebrated, despite their reliance

¹⁵⁸ Truths about origins matter: as McGettrick (2022) argues of Ireland's recent reforms, 'When combined, the records form a narrative of how we came to inhabit our current identities; for example, how and why we were separated from our mothers, how we came to be placed with our adoptive families. In some cases, the files will also expose illegal activity.' McGettrick, Claire, 'Our Rights as Adopted People Will Not Be Enshrined in Law, They'll Be in Grave Danger' (2022). <https://www.thejournal.ie/author/claire-mcgettrick/7810/>. See also the Submission of the Irish Human Rights and Equality Commission at <https://www.ihrec.ie/app/uploads/2021/07/Submission-on-the-General-Scheme-of-the-Birth-Information-and-Tracing-Bill-2021-Final.pdf>.

¹⁵⁹ Subsequent litigation confirmed the significant mishandling of some of the testimony. See further The Clann Project (2021). http://clannproject.org/wp-content/uploads/Clann-Press-Release_17-12-21.pdf. The IDC Report (2013) had similarly been selective, ignoring NGO-collected testimonies.

¹⁶⁰ Breathnach, C., 'A Dark, Difficult, and Shameful Chapter' *Historians' Watch*, Histories of the Present (2021) <https://www.historyworkshop.org.uk/mother-and-baby-homes-report/ref>.

¹⁶¹ Hipchen, E., 'Adoption Geometries' *Adoption & Culture* (2018) 6 (1), pp. 229–247, p. 229.

¹⁶² *Ibid.*, p. 239.

¹⁶³ As one Irish TD noted of the difficulties of achieving legislative reform and instituting reparative measures for forced adoptions, there is often a chronic 'failure to approach the issue from a human point of view when it comes to redress. It is precisely that dehumanisation which lies at the heart of the wrong that was done to children and mothers for decades in this State' (R. B. Barrett, Dáil Éireann Debate—Thursday, 20 January 2022, Vol. 1016, No. 5, Birth Information and Tracing Bill 2022).

¹⁶⁴ Yngvesson, Barbera, 'Belonging in an Adopted World: Race, Identity, and Transnational Adoption' (2010) University of Chicago Press: Chicago.

upon the harsh, perhaps permanent, losses of others. Perspective clearly matters, though: a change of viewpoint can significantly alter how certain stories about adoption and orphanisation might be received or understood. Warnings over unexpected contact, for example, will resonate very differently if the reader identifies more with the potentially 'monstrous' figure hoping for reunion (or redress) than with the unwed, perhaps now elderly mother hoping to keep details of her past hidden away. Equally, an adoptive parent may regard their adoption of a child as simply the happy endpoint in their new family's permanence narrative, rather than the complex beginning—or interruption—of a transplanted child's original life story. The myths of orphanhood and consensual relinquishment can similarly negate the existence of birth parents and other original familial kinships. The notion of freely 'giving up' a child may be especially problematic, both conceptually and in practice, where forced adoptions rely upon orphanisation, secrecy, and the severance of familial connections. Adoptees seeking birth information—or some manner of reunion—may be unable to regard the sealing or redaction of their birth and adoption records as anything other than insurmountable barriers to accessing their original truths. Adoptive parents may however view such a level of confidentiality as utterly essential to securing their new family's sense of permanence. Birth parents might wish to retain anonymity, or, conversely, perhaps see legal bars on post-adoption contact as a human rights violation, while jurists might interpret such restrictions on the right to enjoy family life as an unavoidable, 'last resort' endpoint, and therefore an essential aspect of the adoption process.

The depictions of otherness discussed here take differing formats across various literary genres but still point to just how easily complex rights issues can arise where vulnerability-enhancing distinctions based upon birth status (legitimacy, orphanhood) have been crafted into existence by ruling elites.¹⁶⁵ As Dodson (1997) observed, works that seek to challenge 'fictional' atrocities can 'help us attend to current global horrors.'¹⁶⁶ The warnings contained in dystopian texts are not dissimilar to those seen in folkloric tales, orphan rescue stories, and Victorian or Dickensian novels. All these genres examine what

¹⁶⁵ See further the BASW Response to *The Recommendations of the British Association of Social Workers* ('BASW') (2018) (on human rights and ethics in adoption) which noted that 'Adoption has been a particularly politicised and contentious area of public policy in recent years in the UK, perhaps most particularly in England. Political and ideological perspectives on adoption drive legal frameworks, policy, the culture of practice and the use of resources.' <https://www.basw.co.uk/media/news/2018/jan/basw-unveils-adoption-enquiry-report-and-key-findings>.

¹⁶⁶ Dodson, D. J., 'We Lived in the Blank White Spaces': Rewriting the Paradigm of Denial in Atwood's *The Handmaid's Tale* (1997) *Utopian Studies* 8 (2), pp. 66–86.

happens when the powerless start to ask difficult questions or try to challenge unfair, inequitable systems. In *Never Let Me Go*, for example, public sympathy and activism quickly fizzled out once ‘the normals’ began to worry that genetically engineered clones might outshine humans and usurp them from their position of privilege. This echoes the fears that used to attach to bastardy, where illegitimate offspring were presumed to be hell bent on displacing legitimate heirs, taking away their inheritance, or stealing their privileged place at the hearthside. The underpinning question is perhaps *why* we need to discriminate against certain vulnerable others. Those who express the most revulsion at finding themselves in the company of kinless or orphanised others (the Hailsham Guardians of *Never Let Me Go*, *Jane Eyre*’s cruel Reed cousins, the snobbish servants or townsfolk of many orphan rescue stories, and most stepmothers in folkloric tales, e.g.) perhaps see a reflection of their own fears and frailties in those that they choose to shun or disparage.

They are not always the most blameworthy, evil characters within such narratives, however. This dubious honour is held instead by such unyielding governing entities as The Trademaster (*Son*), Gilead’s rulers (*The Handmaid’s Tale*), an algorithm-led AI (*Logan’s Run*), the stereotypical witches of folklore, a justice-wielding Committee Chair (Angela, in *An Episode of Sparrows*), or an abandoning creator-genitor (*Frankenstein*). And yet, it is these more obviously malevolent villains that are the most easily defeated and overthrown in the end by heroic determination clever bartering, stoic resistance, the slow passage of time, or some other form of ‘magic.’¹⁶⁷ The less visible, more subtly insidious means of othering the vulnerable—withheld apologies, denials of kinship, so-called comedic swipes at adoption or adoptees—are much more difficult to eradicate or legislate against, in fiction as in life. Law reform alone can seldom achieve meaningful changes to human behaviours and beliefs, especially those which might have their roots in long-standing customary norms, ingrained fears and biases, or superstitions. Templates for meaningful redress and reform must look therefore to wider sociocultural issues—and signs of lingering unconscious biases—that perpetuate old abuses and subtle yet insidious otherings. Jurists and decision-makers might find useful guidance amongst the ‘testimonies’ of orphanised, othered characters in certain works of literary fiction, to gauge the extent to which such treatment still occurs and might somehow be prevented.

¹⁶⁷ See further Hansot (1994), who argued that it is dystopias that are the most ‘notable for the obsesiveness, if not the finesse, with which their elites attempt to eliminate dissent. The sheer exigencies of survival might be thought to preclude resistance. But the opposite claim is equally compelling. Without some resistance in the name of a humanity the dystopia is fast bent on eliminating, survival lacks meaning.’ Hansot, Elizabeth, ‘Selves, Survival, and Resistance in *The Handmaid’s Tale*’ *Utopian Studies* (1994), 5 (2), pp. 56–69.

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