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The Inconsistent Inheritance Rights of Adult Adoptees and a Proposal for Uniformity

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THE INCONSISTENT INHERITANCE RIGHTS OF ADULT ADOPTEES AND A PROPOSAL FOR UNIFORMITY

As summarized by the comparison of laws in Wisconsin, Illinois, Indiana, and Minnesota, the inheritance rights of adult adoptees vary across jurisdictions. The inheritance rights of an adult adoptee will depend on the status of the stranger-to-the-adoption rule in the jurisdiction, the age limitations for inheritance in the jurisdiction, and whether there is any language granting or restricting inheritance rights in the testamentary documents. The majority of the time, the goal of the adoption is to make the person a genuine member of the family. As it stands, states do not uniformly treat adult adoptees as genuine members of the family. A default rule that uniformly recognizes the adoptee's inheritance rights is generally in line with the adoptor's motivation for the adoption. Three proposals may help to remedy the inconsistent adoption rights across jurisdictions: First, "family" should be defined by looking at the functional role each member plays, as opposed to using marital status to define "family" and to determine the benefits that accompany that status through marriage. Second, allowing a person to designate his or her heir is a partial solution for partners that are prevented from adopting or for partners who are discouraged from adopting by the awkward parent–child relationship that would result from the adoption. Third, a uniform law that gives an adult adoptee the status of a natural child of the adoptor, without any age limits, would ensure the equal treatment of adult adoptees across the country.

I. INTRODUCTION

In the areas of trust and will interpretation, states vary on how to interpret class gifts that include language such as "issue," "heirs," and "children." This variance is one motivation for people to undertake drastic measures such as adult adoption. For example, Father and Mother set up a trust to benefit their children, X, Y, & Z. Z dislikes his siblings but has no spouse or children. Z wants to make sure his share of his parents' trust does not go to his siblings. Z adopts a good friend of his, T, who is an adult. Jurisdictions vary on how to interpret T's interest and vary on T's ability to benefit from Z's parents' trust. Some statutes only restrict an adult adoptee's ability to inherit from a third party when the testamentary documents specifically prohibit such inheritance. Other statutes set a strict age limit, disallowing an adult adoptee to inherit from a third party when they are adopted after age eighteen. Although the example illustrates one motivation for adult adoption, most times an adoption is a result of a close and loving relationship. The goal of the adoption is to make the person a genuine member of the family. As it stands, states do not uniformly treat adult adoptees as genuine members of the family. A default rule that uniformly recognizes the adoptee's inheritance rights generally aligns with the adoptor's motivation for the adoption.

There are several different theories on how to remedy this inconsistency. One solution would change the current definition and meaning of "family" in the law. The so-called "functional" approach attempts to define the familial relationship by actually looking at the nature of the relationship between parties. Another solution would allow people to designate a beneficiary at law, eliminating the need to turn to drastic measures, such as adult adoption. A third solution would be to pass a uniform law giving an adult adoptee the status of a natural child. Uniformity would help to fulfill the goal of undertaking the adoption in the first place—to take in the person as a genuine member of the family.

In this Comment, Part II will discuss the history of adoption and give a background on how adult adoption differs from "regular" adoption. Part III will discuss the different motivations parties would have for adult adoption, ranging from inclusion in a class gift to denying standing to collateral relatives who seek to challenge a testamentary disposition. Part IV compares the current inheritance rights of adult adoptees in Wisconsin, Illinois, Indiana, and Minnesota. Part V outlines solutions and proposals for solving the inconsistency of adult adoptees'

inheritance rights across jurisdictions. Finally, Part VI concludes with a summary of the main issues and the proposals to remedy those issues.

II. HISTORY OF ADOPTION

The progression of the laws of succession and adoption is important to understanding the slow changes and unsure outcomes in inheritance law as applied to adoptees today. Adoption was not recognized at common law; the process of formal adoption is a product of statutory law.[1] At common law, succession was based on blood relationships.[2] As a result of this preference for blood relationships, historically there was strong resistance to the idea that anyone outside a direct blood relationship would inherit family property.[3] This resistance started to change in the mid-nineteenth century when the first adoption statutes helped to legitimize the idea of adoption, allowing families to codify "parent–child" relationships.[4] The first statutes, however, disfavored adoptees and barred them from inheriting from third-party donors under the "stranger-to-the-adoption rule."[5] In contrast, statutes today treat adopted children as "full-fledged" members of the adoptive family.[6] Today, adoption statutes seek to promote the best interests of the child, a goal accomplished by totally transplanting the child into the new family with a "fresh start."[7]

Even though modern adoption statutes attempt to transplant a minor adoptee into the new family, many statutes leave unanswered

1. *See* Jan Ellen Rein, *Relatives by Blood, Adoption, and Association: Who Should Get What and Why (The Impact of Adoptions, Adult Adoptions, and Equitable Adoptions on Intestate Succession and Class Gifts)*, 37 VAND. L. REV. 711, 713 (1984). Rein's 1984 article has been highly influential and frequently cited within the field. *See* E. Gary Spitko, *Open Adoption, Inheritance, and the "Uncleing" Principle*, 48 SANTA CLARA L. REV. 765, 780 n.54 (2008) (stating that Rein's was an "important article on inheritance rights arising from adoption"). As of February 13, 2012, Westlaw had 108 references that cite to Rein's article, including sixteen cases.

2. Rein, *supra* note 1, at 713.

3. *Id.*

4. Ralph C. Brashier, *Children and Inheritance in the Nontraditional Family*, 1996 UTAH L. REV. 93, 148 (1996); Rein, *supra* note 1, at 714–15 (explaining that the first adoption statutes were part of a large "wave of social welfare reform").

5. Spitko, *supra* note 1, at 771 (quoting Naomi Cahn, *Perfect Substitutes or the Real Thing?*, 52 DUKE L.J. 1077, 1128 (2003)). The stranger-to-the-adoption rule creates a presumption that an adoptee is not within a class gift when the donor is not also the adoptor. Rein, *supra* note 1, at 733.

6. Spitko, *supra* note 1, at 772.

7. Kelly v. Iverson (*In re* Estates of Donnelly), 502 P.2d 1163, 1166–67 (Wash. 1972); Rein, *supra* note 1, at 713, 719.

questions regarding succession rights of the adoptee, the adopting family, and the adoptee's genetic family.[8] Professor Jan Rein enumerates topics that an ideal statute would cover concerning succession rights in an adoption:

> (1) Can the adoptee and the adoptor inherit from each other? (2) Can the adoptee inherit through the adoptor from the adoptor's kindred? (3) Can the adoptor's kindred inherit from and through the adoptee? (4) Should the adoptee's former ability to inherit from his biological parents and their kindred be retained or abolished? (5) Should the former ability of the biological parents and their kindred to inherit from the adoptee be retained or abolished? (6) Should any of these questions be answered differently in relative adoption cases when the adoptor is either a stepparent or a blood relative of the adoptee? . . . (8) Should these questions be answered differently with respect to inheritance by, from, and through a person who is adopted as an adult?[9]

Even if the relevant statute adequately covers an adoptee's inheritance rights, a donative document may alter the rights of adoptees.

To determine if an adoptee inherits under a donative document, the adoption statute may become relevant to aid in the court's interpretation.[10] To interpret a donative document, the court first looks at the donor's intent, which is the "controlling consideration in determining the meaning of the donative document."[11] If there are ambiguities or gaps, the court looks at the statute:

> [T]he court must find the donor's intent somehow and does so by indulging in a presumption as to what the average donor using the language he used must have intended. Here is where the adoption statutes and the statutes of descent and distribution

8. Rein, *supra* note 1, at 712.

9. *Id.* at 718.

10. *See* McKee v. McDonald (*In re* Estate of McDonald), 20 Wis. 2d 63, 67, 121 N.W.2d 245, 248 (1963) ("Existing statutory and case law is one of the extrinsic aids which may be consulted in resolving a will ambiguity by construction. The reason for this is that testator is presumed to know the law—both statutory and case law. Where applicable law is to be looked to as a surrounding circumstance, it is the law in effect at the time of making the will." (internal citations omitted)).

11. RESTATEMENT (THIRD) OF PROP.: WILLS AND OTHER DONATIVE TRANSFERS § 10.1 (2003).

> come in by the back door. Most courts now view these statutes as reflective of community attitudes toward adoptees and thus, by inference, reflective of the attitude of the particular donor as a member of the community.[12]

This process of interpreting a donative document and using the statutes to fill gaps is apparent in the interpretation of class gifts.[13] An example of a class gift would be a disposition in a will giving money or property "to my nieces and nephews to share equally."[14] A donor may never consider whether a class gift should include an adoptee, creating the possibility that the court will use the statute as a gap-filler.[15]

When a court must decide the inheritance rights of adoptees, several factors come into play, including the donor–donee relationship and the laws in force at the time the donative document was executed.[16] First, courts distinguish between instruments executed by the adoptor and instruments executed by someone other than the adoptor.[17] When the adoptor is the donor, a class gift will include the adoptee.[18] This concept is consistent with the goal of adoption statutes—a total transplantation of the adoptee into the adoptor's family.[19] However, when the donor is someone other than the adoptor, for instance where a grandparent gives a gift "to my grandchildren" and there is a grandchild adopted as an adult, courts have had a harder time deciding whether adoptees are included in a class gift.[20]

In addition to the relationship between parties, courts may also consider the stranger-to-the-adoption doctrine, which creates a

12. Rein, *supra* note 1, at 732; *see also In re* Estate of McDonald, 20 Wis. 2d at 67, 121 N.W.2d at 248 (explaining that the court may consult the statutes as an extrinsic aid in resolving a will ambiguity).

13. "A class gift is a disposition to beneficiaries who are described by a group label and are intended to take as a group." RESTATEMENT (THIRD) OF PROP.: WILLS AND OTHER DONATIVE TRANSFERS § 13.1(a) (Tentative Draft No. 4, 2004).

14. *See, e.g.*, Stratton v. Rollings (*In re* Estate of Phillips), 236 Wis. 268, 272, 294 N.W. 824, 825 (1940) (devising "to my nieces and nephews . . . the sum of $8,000 to be divided between them share and share alike and to their heirs and assigns forever").

15. Rein, *supra* note 1, at 732.

16. *Id.* at 733, 737.

17. *Id.* at 733.

18. *Id.*

19. *See id.* at 719; Spitko, *supra* note 1, at 772.

20. *See infra* text accompanying notes 21–28 (explaining that whether the adoptee is entitled to inherit from a third party depends on whether the jurisdiction has repealed the stranger-to-the-adoption rule and whether the new rule is applied retroactively).

presumption that an adoptee is not within a class gift when the donor is not also the adoptor.[21] To rebut the presumption, the party seeking to include the adoptee within a class gift must prove that the donor was aware of the adoptee at the time of the instrument's execution.[22] Recently however, courts have overwhelmingly overturned the stranger-to-the-adoption presumption, giving way to a more inclusive policy toward adoptees.[23] In a case on point, the Supreme Court of New Jersey stated that "[w]e cannot believe it probable that strangers to the adoption would differentiate between the natural child and the adopted child of another. . . . We ought not impute to others instincts contrary to our own."[24] Courts no longer automatically exclude adoptees from a class gift executed by a third party; however, there can be restrictions upon the gift.[25] For example, the *Uniform Probate Code* (UPC) suggests that if the transferor is not the adoptive parent, an adoptee will not take in a class gift unless: "(1) the adoption took place before the adoptee reached [18] years of age; (2) the adoptive parent was the adoptee's stepparent or foster parent; or (3) the adoptive parent functioned as a parent of the adoptee before the adoptee reached [18] years of age."[26]

21. Rein, *supra* note 1, at 733; *see also* Warren v. Prescott, 24 A. 946, 949 (Me. 1892) (stating that "[b]y adoption, the adopters can make for themselves an heir, but they cannot thus make one for their kindred"); Knoeller v. Uihlein (*In re* Estate of Uihlein), 269 Wis. 170, 176, 68 N.W.2d 816, 820 (1955) ("The status resulting from adoption proceedings is not a natural one. It is a civil or contractual status. One may have the right to assume the status of a father to a stranger of the blood, but he has no moral right to impose upon his brother the status of an uncle to his adopted son." (quoting Bradley v. Tweedy (*In re* Estate of Bradley), 185 Wis. 393, 396–97, 201 N.W. 973, 974 (1925))).

22. Rein, *supra* note 1, at 733–34.

23. *Id.* at 735.

24. *In re* Estate of Coe, 201 A.2d 571, 575 (N.J. 1964); *see also* Smith v. Reinhart (*In re* Will of Adler), 30 Wis. 2d 250, 262, 140 N.W.2d 219, 225 (1966) ("This theory [of the importance of blood relationships] is completely contrary to the present attitude of the family and of the public toward adoption. The tendency, desire, and public policy in every adoption is to completely absorb an adopted child into a family unit and to make his status in fact indistinguishable from that of a natural child, not only in his relationship with his adoptive parents, but, also, with the general public and with relatives who are not immediate members of the family circle.").

25. *See* UNIF. PROBATE CODE § 2-705 (2004) (amended 2008).

26. *Id.* § 2-705(f). The brackets around the eighteen signify that the developers of the UPC do not believe there will be uniformity on the specific age. Thus, states may allow adoptees to take under the will if they were raised in the adoptor's house from an earlier age. For example, in Wisconsin, the adoptee can take as a member of a class if the "[t]he adoptive parent raised the adopted person in a parent-like relationship beginning on or before the child's 15th birthday and lasting for a substantial period or until adulthood." WIS. STAT. § 854.20 (2009–2010).

In addition to the stranger-to-the-adoption rule, courts may take into consideration the adoption laws that were in force at the time the document was executed.[27] This factor becomes especially significant when the court's interpretation of the instrument occurs many years after its execution.[28] For instance, imagine a situation where the instrument was created when the stranger-to-the-adoption doctrine was in full force, but the interpretation happens today, when the doctrine has been mostly overturned.[29] Courts have been inconsistent on whether to apply the stranger-to-the-adoption doctrine retroactively.[30] For example, the Supreme Judicial Court of Massachusetts stated that "[w]e generally apply the law at the time of death, with the understanding that testators have kept abreast of the changes in the law and would make appropriate revisions in their instruments if these changes contravened their original expectations."[31] In contrast, Indiana abrogated the stranger-to-the-adoption rule in 2003 and included a provision that allows courts to apply the new rule retroactively, meaning that adoptees would inherit from a third party even if the testamentary document was executed while the stranger-to-the-adoption rule was effective.[32] In *Paloutzian v. Taggart*, the Indiana Court of Appeals applied the new statute to create a rebuttable presumption that the donor intended to include her adopted grandchild when the trust stated it would benefit the "children" of her son if he did not survive the donor.[33]

Faced with similar circumstances, the United States Court of Appeals for the District of Columbia refused to retroactively apply the statute that overturned the stranger-to-the-adoption doctrine.[34] One reason that courts refuse to apply the new presumption to previously executed instruments is because of the "assumption that the average American citizen of fifty or eighty years ago would not have wished non-blood related adoptive family members to partake of his bounty."[35]

27. Rein, *supra* note 1, at 737. Rein terms this factor "the retroactivity problem." *Id.*

28. *See, e.g.*, Paloutzian v. Taggart, 931 N.E.2d 921, 923 (Ind. Ct. App. 2010) (interpreting a document in 2010 that was executed in 1953).

29. *See, e.g.*, *id.* at 923–24.

30. *See infra* text accompanying notes 31–32 (noting that two jurisdictions are different on whether to retroactively apply an inclusive presumption toward adoptees).

31. Callan v. Winters, 534 N.E.2d 298, 301 (Mass. 1989).

32. IND. CODE ANN. § 30-4-1-4 (LexisNexis 2011).

33. 931 N.E.2d at 929.

34. Riggs Nat'l Bank of Wash., D.C. v. Summerlin, 445 F.2d 201, 209 (D.C. Cir. 1971).

35. Rein, *supra* note 1, at 738.

However, authorities have questioned the validity of this assumption.[36] For example, the court in *Wheeling Dollar Savings & Trust Co. v. Hanes* discussed the retroactive inclusion of an adoptee in a class gift:

> While there may be testators and trustors who are so concerned with medieval concepts of "bloodline" and "heirs of the body" that they would truly be upset at the thought that their hard-won assets would one day pass into the hands of persons not of their blood, we cannot formulate general rules of law for the benefit of eccentrics.[37]

Thus, whether an adoptee will be included in the class gift from a third-party donor depends on (1) the existence of a statute or case overturning the stranger-to-adoption statute and (2) the retroactive application of the statute or rule.[38]

In addition to adoption generally, adult adoption adds another level into the analysis. The vast majority of states allow some form of adult adoption; only six states prohibit or restrict an adult from adopting another.[39] Several of these states are discussed below.

III. WHY WOULD AN ADULT ADOPT ANOTHER ADULT?

In this Part, I will discuss the common and less prevalent reasons why an adult would adopt another adult, the subsidiary issue of partner adoption, and the consequences of adoption.

A. Common Reasons

Rein writes that "[t]he motives revealed in adult adoption cases are a testament to the fertility of human imagination."[40] However, there are a few common motivations for adopting another adult. First, a step-parent or foster parent may want to adopt an adult with whom they

36. Wheeling Dollar Sav. & Trust Co. v. Hanes, 237 S.E.2d 499, 503 (W. Va. 1977); Rein, *supra* note 1, at 739 (stating that the average testator does not, in fact, prefer blood relatives over adopted relatives to inherit his or her property).

37. 237 S.E.2d at 503.

38. *See supra* notes 21–28 and accompanying text.

39. Terry L. Turnipseed, *Scalia's Ship of Revulsion Has Sailed: Will* Lawrence *Protect Adults Who Adopt Lovers to Help Ensure Their Inheritance from Incest Prosecution?*, 32 HAMLINE L. REV. 95, 107–08 (2009).

40. Rein, *supra* note 1, at 750.

have established a parent–child relationship.[41] Second, the goal of the adoption could be to gain some sort of benefit for the adoptee, such as bringing the adoptee within a class gift or guaranteeing the adoptee an intestate share.[42] The benefit could include the adoptee's right to inherit directly from the adoptor or from a third party "through" the adoptor.[43] Third, the adoption might have been an attempt to keep collateral relatives, especially disinherited heirs, from having standing to challenge a disposition of property.[44]

A common motivation that an adult has for adopting another adult is to codify an existing parent–child relationship.[45] "One of the strongest motives for adult adoption is that it allows individuals to formally and legally express their commitment to one another by creating a family unit."[46] For example, a step-parent or foster parent may adopt someone that he or she has raised as his or her own child.[47] For the purposes of inheritance, the UPC looks to whether there was a parent–child relationship between the parties.[48] To be a parent, the parent must "behav[e] toward a child in a manner consistent with being the child's parent and perform[] functions that are customarily performed by a parent."[49] If there is such a relationship, "the parent is a parent of the child and the child is a child of the parent for the purpose of intestate succession."[50]

41. Statutes that do restrict adult adoption often make an exception for a step-parent. For example, Alabama law permits adult adoptions when an adult "consents in writing to be adopted and is related in any degree of kinship . . . or is a stepchild by marriage." ALA. CODE § 26-10A-6 (LexisNexis 2009).

42. *See In re* Adoption of Swanson, 623 A.2d 1095, 1097 (Del. 1993) ("Many jurisdictions limit inquiry into the motives or purposes of an adult adoption. However, most recognize that adult adoptions for the purpose of creating inheritance rights are valid.").

43. *See* Turnipseed, *supra* note 39, at 97.

44. *Id.*; DUKEMINIER ET AL., WILLS, TRUSTS AND ESTATES 102 (8th ed. 2009) (noting that "[t]he only persons who have standing to challenge the validity of a will are those who would take if the will were denied probate").

45. *See supra* text accompanying note 41.

46. Gwendolyn L. Snodgrass, *Creating Family Without Marriage: The Advantages and Disadvantages of Adult Adoption Among Gay and Lesbian Partners*, 36 BRANDEIS J. FAM. L. 75, 80–81 (1997–1998).

47. *See, e.g.*, Hays v. Hays, 946 So. 2d 867, 870 (Ala. Civ. App. 2006) (disallowing an attempt by a step-mother to adopt her step-daughter after her husband's death because the relationship did not qualify for the statutory adoption through marriage).

48. UNIF. PROBATE CODE § 2-115(4) (2004) (amended 2008).

49. *Id.*

50. *Id.* § 2-116.

A second motivation is to bring the adoptee within a class gift or to codify the relationship such that the adoptee will share the adoptor's estate if he or she were to die intestate.[51] Courts have come to different results on this issue, especially when the donor of the gift is not the adoptor.[52] Some courts allow an adult adoptee to inherit, for example, from the parents of the adoptor who give a gift to their grandchildren, while other courts would disallow this gift.[53] For example, in the case *In re Adoption of Berston*, a twenty-nine-year-old petitioned to adopt his mother to bring her within the provisions of a trust created by his father.[54] The court allowed the adoption, stating that the statute "unequivocally authorizes a petition for the adoption of 'an adult' by 'any person' as to foreclose any limiting construction."[55]

Another main motivation to adopt an adult is to deny standing to potential contestants to a will. "The only persons who have standing to challenge the validity of a will are those who would take if the will were denied probate. To gain standing to challenge the will, the decedent's collateral relatives must first overturn the adoption."[56] For example, in *Collamore v. Learned*, a seventy-year-old man adopted three adults for the purpose of denying his relatives standing to oppose his will.[57] Justice Holmes, before he was appointed to the U.S. Supreme Court, wrote that adopting another adult for the purpose of denying standing to relatives was "perfectly proper."[58] Another example is *In re Adoption of Swanson*, where the adoptor sought "to prevent collateral claims . . . from remote family members."[59] The Delaware Supreme Court stated that beyond the "common sense limitations," the motive behind an

51. Susan N. Gary, *Adapting Intestacy Laws to Changing Families*, 18 LAW & INEQ. 1, 38 (2000).

52. Jerry Simon Chasen, *Planning for Non-Traditional Families*, *in* ADVANCED ESTATE PLANNING TECHNIQUES 345, 352 (ALI-ABA, Course of Study, 2006) (noting that some states have given adult adoptees less rights to inheritance than minor adoptees); Turnipseed, *supra* note 39, at 104–05. "Even when statutory language indicates that adopted adults may qualify as members of a class, courts will not necessarily interpret or apply the law in that manner when construing wills and trust instruments." Chasen, *supra*, at 352.

53. *See* Turnipseed, *supra* note 39, at 104–05.

54. Berston v. Minn. Dep't of Pub. Welfare (*In re* Adoption of Berston), 206 N.W.2d 28, 29 (Minn. 1973).

55. *Id.* at 30 (quoting MINN. STAT. § 259.22 (1971)).

56. DUKEMINIER ET AL., *supra* note 44, at 102.

57. 50 N.E. 518, 518–19 (Mass. 1898).

58. *Id.* at 519.

59. 623 A.2d 1095, 1096 (Del. 1993).

adult adoption is generally not relevant.[60] To that end, the court allowed the adoption, denying the adoptor's relatives standing to challenge his will.[61]

B. Less Prevalent Reasons

In addition to the main motivations for adopting an adult, there are several collateral reasons to adopt another adult, including to obtain tax benefits and to circumvent strict housing codes.[62] One such reason is to obtain favorable tax treatment.[63] Through the adoption, the adoptor may be able to receive the "head of household" status for taxes and may be entitled to a dependency deduction.[64] Additionally, the adoptor might seek to adopt another adult to avoid an inheritance tax.[65] *In re Adoption of Swanson* is an example of a case where an adoptor who sought to avoid an inheritance tax.[66] The adoptor sought "to obtain the reduced inheritance tax rate which natural and adopted children enjoy under Delaware law."[67] The Delaware Supreme Court allowed the adoption.[68] In addition to beneficial tax rates, a person may seek to adopt another adult to circumvent housing codes. For example, a man in Colorado sought to adopt his partner to circumvent an ordinance that required persons living within the applicable zone to be family members.[69] In addition to tax and housing benefits, Turnipseed believes there could be many benefits of adult adoption, including the following:

> access to health insurance coverage and other employee benefits of the adoptor; allowing recovery in tort actions and survivor benefits; . . . life insurance beneficiary designations; Social Security payments; consent authorizations or visitation privileges

60. *Id.* at 1099.

61. *Id.*

62. *See infra* text accompanying notes 63–70.

63. Jennifer Tulin McGrath, *The Ethical Responsibilities of Estate Planning Attorneys in the Representation of Non-Traditional Couples*, 27 SEATTLE U. L. REV. 75, 86 (2003).

64. *Id.*

65. *See* Turnipseed, *supra* note 39, at 105. As of right now, eight states still collect an inheritance tax. *See* McGuireWoods LLP, *McGuireWoods LLP State Death Tax Chart* (Mar. 26, 2012), http://www.mcguirewoods.com/news-resources/publications/taxation/state_death_tax_chart.pdf.

66. 623 A.2d at 1096.

67. *Id.*

68. *Id.* at 1099.

69. W.D.A. v. City & Cnty. of Denver (*In re* W.D.A.), 632 P.2d 582, 583 (Colo. 1981).

> relating to hospitals, jails, and other governmental agencies; attainment of immigration status; obtaining royalty status; taking advantage of rent control; and . . . permitting an adopted child of a university employee to enroll in said university, or a reciprocal university, free of charge.[70]

Thus, whether seeking to codify a parent–child relationship or to receive some other benefits, there are many motivations for seeking an adult adoption.

C. Adopting a Partner

There is another area involving partners, both heterosexual and homosexual, who have attempted to adopt one another. In regards to homosexual adoption, Turnipseed writes that "[f]or homosexual people in jurisdictions that do not recognize same-sex marriage (or something close that yields many of the same benefits and burdens), adoption is one darn sure (or darn-close to darn sure) way of ensuring inheritance, albeit drastic."[71] To oppose spouse and partner adoptions, courts have based their decisions on grounds such as "(1) non-statutory public policy; (2) very narrow statutory interpretation; (3) fraud on the court by attempting to conceal the sexual relationship; and/or (4) incest-related arguments."[72] Courts supporting the right of spouses and partners to adopt argue simply that "adoption is purely a statutory creation and, if the statute says you can adopt anyone, then you can adopt anyone—case closed."[73]

The first reason that courts reject partner-adoption is public policy.[74] The most famous cases rejecting partner-adoption come from New York. The first time the New York courts addressed the issue was in *In re Adoption of Adult Anonymous*, where the court allowed one partner to adopt the other.[75] Subsequently, however, the New York courts have held that one partner, whether homosexual or heterosexual, may not adopt the other.[76] This trend was demonstrated in a later case, where a fifty-seven-year-old man attempted to adopt his fifty-year-old partner,

70. Turnipseed, *supra* note 39, at 105–06 (footnotes omitted).
71. *Id.* at 102.
72. *Id.* at 111 (footnotes omitted).
73. *Id.*
74. *Id.*
75. 435 N.Y.S.2d 527, 527, 531 (Fam. Ct. 1981).
76. *In re* Adoption of Robert Paul P., 471 N.E.2d 424, 425 (N.Y. 1984).

with whom he had been living for twenty-five years.[77] The New York statute simply states that "an adult unmarried person . . . may adopt another person."[78] The court in *In re Adoption of Robert Paul P.* emphasized the necessity of a parent–child relationship in order to approve an adoption and stated that adoption "is plainly not a quasi-matrimonial vehicle to provide nonmarried partners with a legal imprimatur for their sexual relationship, be it heterosexual or homosexual."[79] The court believed that adopting a partner was "wholly inconsistent with the underlying public policy of providing a parent–child relationship for the welfare of the child."[80] Though New York public policy prevents partner-adoption, most courts in other states faced with this question have allowed the adoption and have not found the parties' relationship to be preventative.[81]

A second way that courts reject partner adoption is by interpreting the adoption statute narrowly, only allowing adoptions when there is a specified relationship.[82] For example, the court in *In re Adoption of Robert Paul P.* required the petitioners to establish a parent–child relationship to grant the adoption, even though the New York statute has no such limitation;[83] "an adult unmarried person . . . may adopt another person."[84] Another example is *In re Jones*, where a thirty-year-old married man attempted to adopt his twenty-year-old lover, who was also married.[85] The court stated that the probate judge "is clothed with judicial discretion as he considers a petition where one adult seeks to adopt another" and that "this court has repeatedly said that a statute will not be construed so as to achieve an absurd, meaningless, or patently inane result."[86] Thus, in addition to public policy arguments,

77. *Id.*

78. N.Y. DOM. REL. LAW § 110 (Consol. 2009).

79. 471 N.E.2d at 425.

80. *Id.* (citing Orsini v. Blasi (*In re* Adoption of Malpica-Orsini), 331 N.E.2d 486, 489 (N.Y. 1975)).

81. Turnipseed, *supra* note 39, at 114–15; *see also In re* Adoption of Swanson, 623 A.2d 1095, 1097 (Del. 1993) (noting that "[m]any jurisdictions limit inquiry into the motives or purposes of an adult adoption").

82. Russell G. Donaldson, Annot., *Marital or Sexual Relationship Between Parties as Affecting Right to Adopt*, 42 A.L.R.4th 776, 785 (1985); Turnipseed, *supra* note 39, at 111.

83. 471 N.E.2d at 425.

84. N.Y. DOM. REL. LAW § 110 (Consol. 2009).

85. 411 A.2d 910, 910 (R.I. 1980).

86. *Id.* at 911.

courts also reject partner-adoption by construing the adoption statute narrowly.

Though some courts reject partner-adoption because of public policy or statutory construction, some courts have allowed partner-adoption. One author notes,

> It has been held that where the adoption statute in question is clearly worded and unlimited as to the persons included therein, the courts are without authority to create any judicial gloss thereon, so that there would be no justification for limiting the adoption statute's applicability to persons not specifically excluded therefrom.[87]

For example, the court in *Bedinger v. Graybill's Executor & Trustee* stated that "[i]t is important to note that the statute is unrestricted and unqualified. It authorizes any adult person to adopt any person of any age."[88] Thus, the court is "bound by the statutory law as written and cannot write into it an exception which the legislature did not make."[89] The court in *Bedinger* held that even if the adoption was "incongruous" with the statute, if the statute did not specifically prevent the adoption, the court was not at liberty to prevent the adoption either.[90] In fact, the *Bedinger* court was also faced with a public policy argument, to which they responded as follows:

> It is ably argued by the appellants that the adoption of a wife is void as against public policy. Public policy is a vague and indefinite term and is incapable of accurate and precise definition. The public policy of a state is to be found in its constitution and statutes, and it is only in the absence of any expressed or implied declaration in these instruments that it may be declared by judicial decisions. If the legislature has spoken clearly and constitutionally, the courts may not substitute their own ideas of public policy.[91]

87. Donaldson, *supra* note 82, at 786.
88. 302 S.W.2d 594, 598 (Ky. 1957).
89. *Id.* at 599.
90. *Id.*
91. *Id.*

Thus, the court concluded that unless the statute specifically prohibits the adoption, or a specific pronouncement of public policy is known or can be gleaned from the statutes, the court is without authority to prevent the adoption.[92]

D. Consequences of Adoption

Although adult adoption has the benefit of codifying a familial relationship between the adoptor and the adoptee, one of the biggest drawbacks is that the process is generally irrevocable.[93] The adoptor cannot simply revoke the process in order to disinherit the adoptee, despite "adoptor's remorse."[94] One famous case on point is that of Doris Duke, who was a beneficiary of a trust executed by her father, James Duke.[95] In 1988, Doris Duke, at age seventy-five, adopted Chandi Heffner, who was thirty-five at the time of the adoption.[96] Duke subsequently regretted adopting Heffner, and wrote the following in her will:

> [I]t is my intention that Chandi Heffner not be deemed to be my child for the purposes of disposing of property under this my Will . . . . Furthermore, it is not my intention, nor do I believe that it was ever my father's intention, that Chandi Heffner be deemed to be a child or lineal descendant of mine for purposes of disposing of the trust estate . . . .
>
> I am extremely troubled by the realization that Chandi Heffner may use my 1988 adoption of her . . . to attempt to benefit financially under the terms of either of the trusts created by my father. . . . I do not wish her to benefit from my estate.[97]

In Heffner's suit against the trustees of the Doris Duke Trust, the court ruled that Heffner was not allowed to take under the trust as the

92. *Id.* at 600.

93. Snodgrass, *supra* note 46, at 75. *But see* T.C. Williams, Annot., *Annulment or Vacation of Adoption Decree by Adopting Parent or Natural Parent Consenting to Adoption*, 2 A.L.R.2d 887, 903–09 (1948) (identifying considerations of the best interests of the child, misconduct by the child, fraud or duress, and mutual consent as possible avenues for revocation by adoptors).

94. Williams, *supra* note 93, at 903–05 (explaining that courts are reluctant to disturb the new status of the child unless it is in the best interests of the child).

95. *In re* Trust of Duke, 702 A.2d 1008, 1011 (N.J. Ch. 1995).

96. DUKEMINIER ET AL., *supra* note 44, at 107.

97. *Id.* at 107–08.

descendant of Duke because the meaning of "lineal descendant" did not include adoptees at the time the trusts were executed, in 1924.[98] However, Heffner sued the executors of the trusts created by Doris's father and claimed that Doris had promised to support Heffner.[99] Before the suit went to trial, the executors of the trusts settled with Heffner for sixty-five million dollars; thus, even though Heffner was not deemed a lineal descendant of James Duke, she ended up profiting enormously from the adoption.[100] Therefore, because of the irrevocable nature of adoption, parties contemplating an adoption must be absolutely sure of their decision.[101]

Considering the irrevocability of adoption, why resort to such a drastic action over other methods of property disposition, such as wills, trusts, insurance, inter vivos gifts, and pension plans? Each of the nonprobate options has drawbacks. One nonprobate option is giving the partner inter vivos gifts. However, inter vivos gifts are irrevocable and only effective if one partner is significantly wealthier than the other.[102] Other options include designating the partner as the beneficiary under an insurance policy or creating a joint bank account.[103] These strategies are similarly effective only if one partner is well-to-do and are only effective for transferring money, not for transferring property.[104] One practical alternative is to create a revocable inter vivos trust. With this option, the parties can protect their assets from claims of undue influence, incapacity, and fraud more effectively than through a will.[105] In a trust, there is a record of many transactions, and the court will be hesitant, particularly due to the "administrative nightmare," to overturn the transactions in the trust.[106] However, many clients are

98. *Duke*, 702 A.2d at 1021.

99. DUKEMINIER ET AL., *supra* note 44, at 108.

100. *Id.*

101. Even though the adoption itself is irrevocable, the adoptor could simply disinherit the adoptee (of the adoptor's own property) in a later instrument. But at that point, the parties are going around in circles—especially if one of the reasons for the adoption was to defeat claims by the adoptor's family of undue influence, incapacity, fraud, and the like. The disinherited adoptee is able to contest the adoptor's will. *See* Calvin Massey, *Designation of Heirs: A Modest Proposal to Diminish Will Contests*, 37 REAL PROP. PROB. & TR. J. 577, 586–87 (2003) (stating that "such disinheritance invites yet another will contest").

102. *Id.* at 587.

103. *Id.*

104. *Id.*

105. *Id.* at 579.

106. *Id.* at 579, 587 (noting that it would be very difficult for a court to "unwind" a settlor's transactions with the trust if the court subsequently finds that the settlor lacked

reluctant to allow another person to hold legal title to their property or are intimidated by the seemingly "complex" nature of trusts.[107] In fact, studies done in collateral areas, such as why people die intestate and what kinds of people execute testamentary documents, have found that people with more education and money are more likely to die with an estate plan.[108] Thus, a trust may be too expensive or "complex" for the average property owner. "While a fully funded revocable inter vivos trust may be a reasonably effective remedy to the problem, this and other standard remedies are likely to remain the province of the sophisticated and affluent who employ equally sophisticated and affluent estate planners."[109]

IV. COMPARISON OF JURISDICTIONS

With the background information in place, this Part outlines and compares the status of adoptees in Wisconsin, Illinois, Indiana, and Minnesota. For each jurisdiction, this Part describes the statute on adoption, describes the statute on inheritance rights of adoptees, and discusses the cases that interpret these statutes. It compares several main factors: (1) statutes regarding adoption and inheritance rights surrounding adoption, (2) early and modern attitudes toward adoption, and (3) rights of adult adoptees.

A. Wisconsin

1. Statutes

Wisconsin's adoption statute is very broad: in Wisconsin, "[a]n adult may be adopted by any other adult, who is a resident of this state."[110] The inheritance rights of adopted persons, however, are more restrictive. In Wisconsin, an adoptee is treated as the biological child of the adoptive parents, and the parents are treated as the biological

capacity or was unduly influenced); DUKEMINIER ET AL., *supra* note 44, at 206 (noting that "[a]lthough trusts, too, can be attacked on grounds of incapacity and undue influence, as a practical matter it is harder to upset a trust if the settlor had a course of dealing with the trustee to evidence competence and the absence of influence").

107. *See* Massey, *supra* note 101, at 579, 587.

108. *See* Gary, *supra* note 51, at 16–17. Gary recaps several studies performed on who dies intestate and why this is so. The studies have found that the older a person is, the more likely they are to have an estate plan. *Id.* Similarly, the wealthier a person is, the likelier he or she is to have an estate plan. *Id.*

109. Massey, *supra* note 101, at 584 (footnote omitted).

110. WIS. STAT. § 882.01 (2009–2010).

parents of the adoptee for inheritance from and through each other if one of the following three conditions exists:

> 1. The decedent or transferor is the adoptive parent or adopted child.
> 2. The [adoptee] was a minor at the time of adoption.
> 3. The [adoptor] raised the [adoptee] in a parent-like relationship beginning on or before the child's 15th birthday and lasting for a substantial period or until adulthood.[111]

Thus, despite the broad adoption statute, the inheritance rights surrounding an adoption are more limited.

2. Early and Modern Attitudes Toward Adoption

Until 1966, Wisconsin had an unfavorable policy toward adoptees both intestate and in testamentary dispositions.[112] An example of Wisconsin's policy toward adoptees in intestate cases is *In re Matzke's Estate*, where the supreme court held that because the adoption statutes were silent on the question of inheritance rights of adoptees, an adult adoptee had no right to take from her adoptive grandmother's intestate estate.[113] In the case, the decedent had three children, two of whom predeceased her.[114] One of the predeceased children had an adopted daughter.[115] The decedent died intestate, and the statutes provided that personal property and land should be distributed to children and to children of any deceased child by representation.[116] The adoption statute stated that an adopted child would be treated as the child of the adoptive parents, but was silent on the question of inheritance from anyone other than the adoptive parent.[117] The court held that the adopted grandchild was not entitled to take under the statute of descent or distribution.[118]

111. *Id.* § 854.20(b). In Wisconsin, a person becomes an "adult" at the age of eighteen. *Id.* § 990.01(3).

112. *See infra* text accompanying notes 123–29.

113. Ruch v. Bender (*In re* Estate of Matzke), 250 Wis. 204, 208, 26 N.W.2d 659, 661 (1947).

114. *Id.* at 205, 26 N.W.2d at 659.

115. *Id.*

116. *Id.*

117. *Id.* at 207, 26 N.W.2d at 660–61.

118. *Id.* at 208, 26 N.W.2d at 661.

An example of Wisconsin's policy toward adoptees in a testamentary disposition is *In re Estate of Uihlein*, in which the supreme court held that the adoptive children of the decedent's daughter were not allowed to take under the decedent's will—a classic "stranger-to-the-adoption" ruling.[119] In the case, the decedent died before his grandchildren were adopted.[120] In attempting to determine whether the adopted children could take as beneficiaries under the will, the court determined that the statute "changes the legal status of an adopted child but it does not purport to make an adopted child the issue of a parent."[121] The supreme court stated that when there is a provision in a will "made for the child of some person other than testator and a child is adopted by that person after the death of testator, the adopted child is not, in the absence of contrary compelling circumstances, entitled to share in a gift to children or issue of the third person."[122]

In 1966, Wisconsin's policy toward adoptees became more liberal when the supreme court in *In re Will of Adler* reversed the stranger-to-the-adoption rule.[123] The court held that the adopted daughter of the testator's niece could inherit under a trust for the benefit of the testator's nieces and nephews and their issue.[124] In the case, with facts nearly identical to those in *In re Estate of Uihlein*, the testator established a testamentary trust for the benefit of his nieces and nephews and their issue, one of whom had adopted a child after the testator's death but prior to the distribution of the trust.[125] At the time *In re Estate of Uihlein* was decided, adopted children could not inherit under the statutes because they were not "heirs of the body."[126] However, when *In re Will of Adler* was decided, the adoption statute provided that "the effect of the order of adoption is to completely change the legal status of the adopted person from that of a child of the natural parents to that of a child of the adoptive parents."[127] About

119. 269 Wis. 170, 177, 68 N.W.2d 816, 821 (1955).

120. *Id.* at 178, 68 N.W.2d at 821.

121. *Id.* at 173, 68 N.W.2d at 819. "Issue" was "construed as meaning blood descendants." *Id.* at 177, 68 N.W.2d at 821.

122. *Id.* at 176, 68 N.W.2d at 820.

123. Smith v. Reinhart (*In re* Will of Adler), 30 Wis. 2d 250, 263, 140 N.W.2d 219, 226 (1966).

124. *Id.* at 263, 140 N.W.2d at 226.

125. *Id.* at 255, 260, 263, 140 N.W.2d at 222, 225, 226.

126. *Id.* at 260, 140 N.W.2d at 225.

127. *Id.* at 257, 140 N.W.2d at 223 (quoting WIS. STAT. § 322.07(1) (1947)).

reversing the "stranger-to-the-adoption" rule, the court stated the following regarding the theory of the importance of blood relationships:

> This theory is completely contrary to the present attitude of the family and of the public toward adoption. The tendency, desire, and public policy in every adoption is to completely absorb an adopted child into a family unit and to make his status in fact indistinguishable from that of a natural child, not only in his relationship with his adoptive parents, but, also, with the general public and with relatives who are not immediate members of the family circle.[128]

Thus, Wisconsin endorsed a more favorable policy toward adoptees starting in 1966.[129]

3. Rights of Adult Adoptees

Today, adoptees will inherit property only if the transferor of the property is also the adoptor, if the adoptee was adopted before the age of eighteen, or the adoptee was raised in the adoptor's household on or before the adoptee's fifteenth birthday.[130] In 2004, in *In re Estate of Pawlisch*, the Wisconsin Court of Appeals held that an adult adoptee was not entitled to take under the trust of his adoptive grandfather because he was not adopted as a minor, nor was he raised in the adoptive parent's household before the age of fifteen, as the statutes require.[131] In the case, the donor established a testamentary trust for the benefit of his son Carl and Carl's issue.[132] Carl did not have any children, but he adopted his nephew Hans when Hans was forty-seven.[133] The statute at the time of the will's execution included adopted children within the meaning of "issue" in a class gift if the adoptee "was adopted after having been raised as a member of the household by the adoptive parent from the child's 15th birthday or before."[134] The court held that the adoption did not entitle Hans to take the remainder of the trust

128. *Id.* at 262, 140 N.W.2d at 225.

129. *See id.*

130. WIS. STAT. § 854.20 (2009–2010).

131. Pawlisch v. Otto V. Pawlisch Trust (*In re* Estate of Pawlisch), No. 03-1430, 2004 WL 35466, ¶¶ 11, 24, 26 (Wis. Ct. App. Jan. 8, 2004).

132. *Id.* ¶¶ 8–10.

133. *Id.* ¶ 11.

134. WIS. STAT. § 851.51(3) (1991–1992).

assets because the donative document did not include adopted children within the meaning of "issue," nor did the statute allow adult adoptees to take within a class gift because Hans was not raised in Carl's household before the age of fifteen.[135]

B. Illinois

1. Statutes

In Illinois, adults may be adopted if they have "resided in the home of the persons intending to adopt [them] at any time for more than 2 years continuously preceding the commencement of an adoption proceeding, or in the alternative that such persons are related to [them] within a degree set forth in the definition of a related child."[136] For an adopted child to inherit from the adopting parents and the lineal and collateral kindred of the parents, the child must either be adopted by or reside with the adopting parents before reaching age eighteen.[137]

2. Early and Modern Attitudes Toward Adoption

In Illinois, similar to Wisconsin, there was an early preference for heirs related by blood over those related by adoption. For example, in 1924 in *Miller v. Wick*, the testator's will stated that his nephew was to receive the principal of the trust at "such time in his life as he shall have a child, his lawful issue."[138] The Illinois Supreme Court concluded that an adopted child was not the "lawful issue" of the testator's heir and was not entitled to take under the terms of the trust established by the testator's will.[139] By 1947, however, the Illinois courts were more open-

135. *Pawlisch*, 2004 WL 35466, ¶¶ 24–26.

136. 750 ILL. COMP. STAT. ANN. 50/3 (West 2009). The term "related child" means "a child subject to adoption where either or both of the adopting parents stands in any of the following relationships to the child by blood or marriage: parent, grand-parent, brother, sister, step-parent, step-grandparent, step-brother, step-sister, uncle, aunt, great-uncle, great-aunt, or cousin of first degree." *Id.* 50/1.

137. 755 ILL. COMP. STAT. ANN. 5/2–4 (West 2007). Even though the statute only discusses the inheritance rights of an "adopted child," the Illinois Appellate Court explained that the legislature was referring to the "parent–child" relationship created by the adoption, and that the word "child" cannot be interpreted to mean "minor" since Illinois permits adult adoptions. Roeder v. Buckman (*In re* Estate of Brittin), 664 N.E.2d 687, 690–91 (Ill. App. Ct. 1996).

138. 142 N.E. 490, 491 (Ill. 1924).

139. *Id.* at 492 (noting that "[w]e think the rational and reasonable understanding of testator's purpose, to be arrived at from the language employed in the will, is that he wished appellant to have a child born in lawful wedlock, in which event, if the child attained the age

minded toward the inheritance rights of adoptees; for example, in *In re Harmount's Estate*, the appellate court held that in the case of a predeceased legatee, the adopted children of the deceased legatee were entitled to receive the inheritance.[140]

The progression of the "stranger-to-the-adoption" rule in Illinois is similar to that of Wisconsin. Documents executed before 1955 were generally held to exclude adopted children; for example, in *Neissl v. Hartman*, the Illinois Appellate Court held that the adoptive grandchild of the testator was not entitled to take under the testator's testamentary trust.[141] The terms of trust authorized the testator's children to appoint trust funds to their own children.[142] However, the document was executed before the adoption occurred, and the testator was unaware of the existence of the adopted children.[143] In 1955, the statute governing the inheritance rights of adoptees was amended.[144] The amended statute declared that by default, adoptees would be entitled to inherit from the collateral kindred of their adoptive parents.[145] For example, in *Martin v. Gerdes*, the adoptee was entitled to take in the testator's estate even though the adoption occurred after the testamentary documents were executed because "an adopted child is a natural child unless the terms of the instrument 'plainly' indicate otherwise."[146] The court did not find

of three years, appellant should become the owner of the principal of the trust fund").

140. Michael v. Michael (*In re* Harmount's Estate), 83 N.E.2d 756, 760 (Ill. App. Ct. 1949). When this case was decided, 3 ILL. REV. STAT. § 14 (1947) stated that adopted children could not inherit "property from a lineal or collateral kindred of the adopting parent per stirpes or property expressly limited to the body of the adopting parent." *In re Harmount's Estate*, 83 N.E.2d at 757. However, the court decided that under the anti-lapse statute, 3 ILL. REV. STAT. § 49 (1947), the descendants of a predeceased legatee, including adopted children, were allowed to inherit property that the predeceased legatee was entitled to inherit. *In re Harmount's Estate*, 83 N.E.2d at 757–58.

141. 196 N.E.2d 528, 530 (Ill. App. Ct. 1963). In another example, the Supreme Court of Illinois looked at the adoption statutes from 1941. Ford v. Newman, 396 N.E.2d 539, 541 (Ill. 1979). The court found it persuasive that the testamentary document was executed before the adoption occurred and that the Illinois statute at the time prohibited adoptees from taking property from the adopting parent's collateral kindred. *Id.* at 541.

142. *Neissl*, 196 N.E.2d at 528.

143. *Id.* at 530.

144. *See* Martin v. Gerdes, 523 N.E.2d 607, 610 (Ill. App. Ct. 1988) (discussing the change in the law that overturned the "stranger-to-the-adoption" presumption). The new law was not applied retroactively, which resulted in courts construing any document executed before September 1, 1955, under the old law; the old law stated that adoptees could not inherit from the collateral kindred of their parents. *Id.* (quoting 3 ILL. REV. STAT. § 2–4 (1955)).

145. 3 ILL. REV. STAT. § 2–4 (1955).

146. *Id.* at 612.

any language in the instrument that "plainly" indicated an intent to exclude adopted children.[147]

Despite the more inclusive policy toward adoptees, the language of the testamentary document can override the statute; it is only in the absence of language that the court can use the statute as an interpretive aid.[148] For example, in *Cross v. Cross*, the testator gave her son the power of appointment to distribute the contents of her trust to her "descendants" through his will.[149] The Illinois Appellate Court held that the adopted grandson was not entitled to take under the will because the language "descendant" signified that the testator intended her estate to go to a blood relative.[150]

3. Rights of Adult Adoptees

Following the statutes on the inheritance rights of adoptees, the courts have been more willing to grant adult adoptees inheritance rights. For example, in *In re Estate of Brittin*, the Illinois Appellate Court permitted the adoptive grandchildren of the testator to inherit from the testator's intestate estate.[151] In the case, the decedent had raised William Eugene from the time he was three and adopted Eugene when he was forty-six, at which time Eugene had five children.[152] The court stated that there was "no statutory distinction between an adopted adult and an adopted minor with respect to the nature of the legal relationship

147. *Id.* at 611. The Illinois Supreme Court, in *First National Bank v. King*, also discussed what constitutes clear intent to exclude adoptees and concluded that "the testator's use of the terms 'lawful descendants' and 'per stirpes' are not sufficient to demonstrate by clear and convincing evidence that [the testator] intended to exclude adopted children." 651 N.E.2d 127, 131 (Ill. 1995). Another case which discussed the evidence needed to rebut the presumption that adoptees are included within testamentary documents is *Altenheim German Home v. Bank of America*, in which the testamentary instrument allowed adopted grandchildren to take in the estate, but was silent on whether adopted great-grandchildren could take in the estate. 875 N.E.2d 1172, 1174–75 (Ill. App. Ct. 2007). The court held that the instrument's silence was not enough to rebut the presumption of inclusion. *Id.* at 1182. The courts have even gone so far as to say that language such as "natural children" and "heirs of the body" is not enough to overcome the presumption. *See* Roller v. Allison (*In re* Estate of Roller), 880 N.E.2d 549, 559 (Ill. App. Ct. 2007).

148. *See supra* note 147 and sources cited therein (giving examples of what language does not overcome the inclusive presumption toward adoptees).

149. 532 N.E.2d 486, 487 (Ill. App. Ct. 1988).

150. *Id.* at 489.

151. Roeder v. Buckman (*In re* Estate of Brittin), 664 N.E.2d 687, 691 (Ill. App. Ct. 1996).

152. *Id.* at 688.

created between the adoptee and the adopting parent."[153] Thus, because a parent–child relationship was created between the testator and Eugene, Eugene's children were considered the natural grandchildren of the testator.[154] Even though the inheritance statute only discusses the inheritance rights of an adopted "child," both adopted children and adopted adults are allowed to inherit from their adoptive parents as if they were natural children.[155]

C. Indiana

1. Statutes

Indiana's statutes regarding adoption and inheritance rights are very favorable to adoptees. Indiana has a very broad adult adoption statute: "An individual who is at least eighteen (18) years of age may be adopted by a resident of Indiana," with proper jurisdiction and the consent of the adult.[156] According to the Indiana Statutes,

> For all purposes of intestate succession, including succession by, through, or from a person, both lineal and collateral, an adopted child shall be treated as a natural child of the child's adopting parents, and the child shall cease to be treated as a child of the natural parents and of any previous adopting parents.[157]

The Indiana Statutes also make it clear that courts should presumptively include an adoptee when construing a will or a trust if that person was adopted before age twenty-one and adopted before the death of the testator.[158]

153. *Id.* at 690.

154. *Id.* at 691.

155. *Id.* at 690–91.

156. IND. CODE ANN. § 31-19-2-1 (LexisNexis 2007).

157. IND. CODE ANN. § 29-1-2-8 (LexisNexis 2011).

158. *Id.* § 29-1-6-1(d) (providing that when a court is construing a will, "any person adopted prior to the person's twenty-first birthday before the death of the testator shall be considered the child of the adopting parent or parents and not the child of the natural . . . parents").

2. Early and Modern Attitudes Toward Adoption

In 1953, Indiana reversed the presumption that an adoptee cannot inherit property from a testator or deceased person intestate who was a stranger to the adoption.[159] The new statute specifically addresses both testate and intestate situations and instructs courts that in interpreting wills, "any person adopted prior to the person's twenty-first birthday before the death of the testator shall be considered the child of the adopting parent or parents."[160] However, the statute is not applied retroactively.[161] An example of a case applying the new presumption is *Adams v. Slater*, in which the child of the decedent's adopted daughter was entitled to inherit from her adoptive grandmother's estate.[162] The Indiana statute at the time, which was very similar to the present statute, stated that for the purposes of inheritance, an adult adoptee is "entitled to inherit as a child from the adopting parent or parents."[163] The court stated that

> [I]t has no right to allow collateral relatives to disturb either the relationship of the adoptive parent to the adopted child or the relationship of the adoptive parent to the adopted child's natural child who, in both a legal and moral sense, should retain all the rights of a natural grandchild.[164]

159. Lutz v. Fortune, 758 N.E.2d 77, 82–83 (Ind. Ct. App. 2001). The stranger-to-adoption presumption remained in effect for trusts, however, until 2003. The 2003 statute, which presumptively includes adoptees within a trust executed by someone other than the adoptor, is to be applied retroactively unless inclusion would either adversely affect a right given to any beneficiary or give someone a share who was not intended to benefit from the trust. *See* Paloutzian v. Taggart, 931 N.E.2d 921, 928–31 (Ind. Ct. App. 2010) (citing IND. CODE ANN. § 30-4-1-4 (West 2009)).

160. IND. CODE ANN. § 29-1-6-1(d).

161. *See Lutz*, 758 N.E.2d at 83 (applying the rule at the time the document was executed to determine whether an adopted grandchild could inherit in her adoptive grandfather's trust for the benefit of his grandchildren). The court applied the statute at the time the document was executed, which excluded adopted children and grandchildren unless there was "something in the extraneous circumstances to rebut said presumption." *Id.* Because there were no extraneous circumstances favoring the adopted grandchild, the adoptee was not allowed to inherit from the trust. *Id.*

162. 175 N.E.2d 706, 710–11 (Ind. Ct. App. 1961).

163. *Id.* at 708 (quoting IND. CODE ANN. § 6-208 (1953)).

164. *Id.* at 710–11.

Similar to Illinois, the terms of an inter vivos trust supersede the default probate laws.[165] For instance, in *Walz v. Walz*, the court held that a child the settlor adopted after the execution of his trust was not entitled to take where the settlor's natural children were individually named as beneficiaries of the trust.[166]

3. Rights of Adult Adoptees

The statutes provide that an adoptee is presumptively included in a will or trust if adopted before age twenty-one and adopted before the death of the testator.[167] Unless the testamentary document indicates otherwise, any person adopted after turning twenty-one will be excluded from a class gift.[168] Thus, the policy toward adult adoptees is slightly more generous in Indiana than in Wisconsin and Illinois, but not by much.[169]

D. Minnesota

1. Statutes

In Minnesota, "any adult person may be adopted, regardless of the adult person's residence" with the consent of the adult to be adopted.[170] The adoption "establishes a parent–child relationship between the adopting parent or parents and the person adopted, including the right

165. *See* Walz v. Walz (*In re* Walz's Living Trust), 423 N.E.2d 729, 730–32, 737 (Ind. Ct. App. 1981) (holding that a child the testator adopted was not entitled to take under the testator's inter vivos trust where the terms of his trust specifically stated that the trust was for the benefit of his two natural children to share equally). The case also discussed the difference between a testamentary document, which will be subject to the laws of probate, such as a will and testamentary trust, and a non-testamentary document, such as an inter vivos trust, which is not controlled by the probate laws (rather, the statutes are used as an interpretive aid). *Id.* at 732–34.

166. *Id.* at 730–31, 737.

167. IND. CODE ANN. § 29-1-6-1(d) (LexisNexis 2011) (providing that when a court is construing a will, "any person adopted prior to the person's twenty-first birthday before the death of the testator shall be considered the child of the adopting parent or parents and not the child of the natural . . . parents").

168. *See id.*

169. *Id.*; WIS. STAT. § 854.20 (2009–2010) (an adoptee will only take if the decedent is also the adoptor, the adoptee was adopted as a minor, or the adoptee was raised in the household of the adopter prior to turning fifteen); 755 ILL. COMP. STAT. ANN. 5/2–4 (West 2007) (an adoptee will inherit from the adopting parents and their "lineal and collateral kindred" if the adoptee is adopted by or resides with the adopting parents before the adoptee turns eighteen).

170. MINN. STAT. ANN. § 259.241 (Supp. 2011).

to inherit . . . ."[171] Because a parent–child relationship is established, "the parent is a parent of the child and the child is a child of the parent for the purposes of intestate succession."[172] Additionally, Minnesota has established a rule that "[a]dopted individuals . . ., and their respective descendants if appropriate to the class, are included in class gifts and other terms of relationship in accordance with the rules for intestate succession."[173]

2. Early and Modern Attitudes Toward Adoption

Minnesota has a liberal policy toward adoptees: whether intestate or in a testamentary document, "adopted children stand in the same position as biological children in all respects."[174] Thus, words such as "issue," "children," and "descendants" will presumptively include adoptees.[175] Further, words such as "issue of her body," without further explanation, are not sufficient to exclude adoptees.[176] In fact, the Minnesota courts, in accordance with the statutes, have made it very clear that adoptees and natural children are to be treated equally as long as there is not explicit language to the contrary:

> We have come to realize that it is not the biological act of begetting offspring—which is done even by animals without any family ties—but the emotional and spiritual experience of living together that creates a family. The family relationship is created far more by love, understanding, and mutual recognition of reciprocal duties and bonds, than by physical genesis. The marriage ceremony gives recognition to this fact as between spouses. Formal adoption recognizes this fact as between parents and children.[177]

In the case *In re Will of Patrick*, the Minnesota Supreme Court held that the adopted nephew of the testator was presumptively entitled to take under the testator's trust, which was for the benefit of the testator's

171. *Id.*

172. MINN. STAT. ANN. § 524.2-116 (Supp. 2011).

173. MINN. STAT. ANN. § 524.2-705 (West 2002).

174. *In re* Trusts Created by Agreement with Harrington, 250 N.W.2d 163, 166 (Minn. 1977) (quoting Patrick v. N. City Nat'l Bank of Duluth (*In re* Will of Patrick), 106 N.W.2d 888, 890 (Minn. 1960)).

175. *In re Will of Patrick*, 106 N.W.2d at 890.

176. *Harrington*, 250 N.W.2d at 167.

177. *In re Will of Patrick*, 106 N.W.2d at 890 (footnote omitted).

siblings and their descendants.[178] In another case, the adoptee was entitled to take from the trust established by her adoptive grandparent because of the presumption in favor of adoptees, even though the trust was for the benefit of the testator's daughter and the "issue of her body."[179]

3. Rights of Adult Adoptees

The inclusive presumptions established in Minnesota extend to adult adoptees.[180] For example, in *In re Trust Created Under Agreement with Lane*, the settlor's adoptive great-grandson, who was adopted as an adult, was entitled to take from the settlor's trust.[181] In the case, the settlor, who adopted his wife's brother, created a trust for the benefit of the brother's sons (his two grandsons) and their issue, but he specifically disinherited the brother's daughter (his granddaughter).[182] One of the testator's grandsons, George Barbour, was unmarried and had no issue, but he decided to adopt Charles DeWitt, the adult son of the testator's disinherited granddaughter.[183] The court stated that "the long history of embracing adult adoption, combined with the lack of explicit exclusion of the children of [the testator's granddaughter], leads to the conclusion that the district court did not err in holding that Charles DeWitt was George Barbour's son and a beneficiary of the trust in question."[184]

In accordance with the broad adoption statute, Minnesota courts have held that neither the motivations behind an adoption nor public policy arguments are relevant in deciding whether to grant the adoption.[185] In *In re Adoption of Berston*, a twenty-nine-year-old petitioned to adopt his mother to bring her within the provisions of a trust created by his father.[186] The court allowed the adoption, stating that the statute "unequivocally authorizes a petition for the adoption of

178. *Id.* at 892 (describing the presumption in favor of adoptees and remanding to the trial court to determine if it was shown by a preponderance of the evidence that the testator intended to exclude the adoptee). This case also provides evidence that Minnesota had overturned the stranger-to-the-adoption rule by 1960. *See id.*

179. *Harrington*, 250 N.W.2d at 167.

180. *See infra* text accompanying notes 181–84.

181. 660 N.W.2d 421, 427 (Minn. Ct. App. 2003).

182. *Id.* at 423–24.

183. *Id.* at 424.

184. *Id.* at 427.

185. *See* Berston v. Minn. Dep't of Pub. Welfare (*In re* Adoption of Berston), 206 N.W.2d 28, 30 (Minn. 1973).

186. *Id.* at 29.

'an adult' by 'any person' as to foreclose any limiting construction. Any considerations of public policy are matters for reappraisal by legislative amendment."[187]

Thus, Minnesota has the most favorable policies for adult adoptees compared to the three states discussed above. An adult adoptee will take intestate and in testamentary documents as long as there are not explicit words to the contrary.[188] In contrast, in Wisconsin, adoptees will inherit property only if the transferor of the property is also the adoptor, if the adoptee was adopted as a minor, or the adoptee was raised in the adoptor's household on or before his or her fifteenth birthday.[189] In Illinois, adoptees will not be treated as a descendant of the adoptor if they were adopted after the age of eighteen or not raised in the adoptor's household before their eighteenth birthday.[190] Finally, in Indiana, unless the testamentary document indicates otherwise, any person adopted after he or she turns twenty-one will be excluded from a class gift.[191]

V. SOLUTIONS AND PROPOSALS

Based on the jurisdictional comparison, which only scratches the surface of adult adoptees' rights, this area of the law would benefit from reform aiming to create more uniformity across jurisdictions. An adoptor who undertakes the drastic measure of adopting another adult usually has a close and loving relationship with the adoptee, and the goal of the adoption is to make the adoptee a genuine member of the family. A default rule that uniformly recognizes the adoptee's inheritance rights is in line with the adoptor's motivation for the adoption. Proposals that may alleviate the inconsistency include embracing a functional definition of "family," allowing partners to designate an heir, and adopting a more inclusive uniform law on the inheritance rights of adult adoptees.

187. *Id.* at 30.

188. *See supra* text accompanying notes 182–187. The Minnesota statutes are clear that adoptees are to be treated equally both intestate and in testamentary documents. *See* MINN. STAT. ANN. § 524.2-116 (Supp. 2011) ("[T]he parent is a parent of the child and the child is a child of the parent for the purposes of intestate succession."); MINN. STAT. ANN. § 524.2-705 (West 2002) ("Adopted individuals . . ., and their respective descendants if appropriate to the class, are included in class gifts and other terms of relationship in accordance with the rules for intestate succession.").

189. WIS. STAT. § 854.20 (2009–2010).

190. 755 ILL. COMP. STAT. 5/2–4 (2007).

191. IND. CODE ANN. § 29-1-6-1(d) (LexisNexis 2011).

A. Functional Definition of Family

Professor Mary Patricia Treuthart wrote an article explaining how the law and social institutions have not caught up with the way people exist as families today, and she proposed that instead of defining "family" through marriage, we should define "family" by an examination of the closeness of the relationship.[192] She explains that

> The traditional family with a breadwinner-husband and a homemaker-wife who live with their biological children is certainly an anomaly in America today. Although existing families have diverse characteristics, the functional aspects of this basic social unit remain the same: the provision of love and support to its members. Social institutions and the law have not kept up with the changes in family life. As a result, many groups which function as families are not recognized as such, and are denied benefits which society bestows upon families which resemble the traditional model, if only superficially.[193]

The U.S. Census Bureau defines "family" as "a group of two people or more . . . related by birth, marriage, or adoption and residing together."[194] A survey done by an insurance company in 1989 asked 1,200 random adults how they would define "family," and a large majority responded with the following broad definition: "a group of people who love and care for one another."[195] Treuthart writes that defining a family based on marriage can be contradictory, since it is

192. Mary Patricia Treuthart, *Adopting a More Realistic Definition of "Family*," 26 GONZ. L. REV. 91, 92 (1990–1991); *see also* Gary, *supra* note 51, at 5 (proposing a similar idea and using a functional definition of family to define "family" in intestacy statutes). Gary states that

> [a] functional definition of family . . . tries to determine what a family does, what functions family members perform for each other and what relationships family members have with each other. The definition attempts to include as family members those who function as family members, those for whom close, loving, caring and nurturing family relationships exist.

Gary, *supra* note 51, at 5.

193. Treuthart, *supra* note 192, at 91–92.

194. *Current Population Survey (CPS)—Definitions and Explanations*, U.S. CENSUS BUREAU, http://www.census.gov/population/www/cps/cpsdef.html (last visited Feb. 3, 2012); *cf.* Gary, *supra* note 51, at 27 (noting that "[i]ntestacy statutes almost uniformly use a formal definition of family: persons related by blood, marriage or adoption").

195. Treuthart, *supra* note 192, at 97.

neither permanent, nor requires "procreation, economic interdependence[, or] even sexual exclusivity."[196] However, "[d]efining a family as a community of persons performing the functions of a family would seem to do more to promote the underlying values on which the policy favoring marriage is based."[197]

Though Treuthart's article focuses on a more functional definition of "family," as an alternative to defining "family" based on marriage, her article is applicable to the area of adult adoption. If the concept of "family" were defined by the functional relationship between people, an adult adoptee would certainly be presumptively included within the family unit.[198] Uniformly including adult adoptees within a "family" seems in line with the changing social mores regarding what defines a family and who is included in a family.[199] As the Minnesota Supreme Court stated, "We have come to realize that it is not the biological act of begetting offspring—which is done even by animals without any family ties—but the emotional and spiritual experience of living together that creates a family."[200]

Even though Treuthart's theory is applicable to adult adoptions, this approach has the limitation of the vague concept of "family." How should "family" be defined? If the legislature defines "family" by the nature of the relationship between parties, this will leave the court with a burden of subjectively analyzing that relationship, which would be a time-consuming process and essentially leave a large gap for courts to fill with their own social policies. A more objective way to define "family" (and one that would be less burdensome for courts) would look at whether the parties share, for example, "economic responsibilities," chores, and child-rearing.[201] Instead of looking at the relationship between parties, courts could look at objective factors surrounding the relationship. The Supreme Court of New Jersey, in determining

196. *Id.* at 98.

197. *Id.*

198. Any testamentary dispositions excluding the adult adoptee would have to be respected by the courts.

199. Treuthart, *supra* note 192, at 91 n.1 (noting that a "traditional" family with a working father, stay-at-home mother, and children constitutes only six percent of families as of 1979 and that as of 1989, only 27% of U.S. households consisted of two parents with children, whereas in 1970 forty percent of households had two parents and children.).

200. Patrick v. N. City Nat'l Bank of Duluth (*In re* Will of Patrick), 106 N.W.2d 888, 890 (Minn. 1960).

201. Treuthart, *supra* note 192, at 113.

whether halfway house residents could be considered a "family" for the purposes of zoning regulations, stated that the residents

> must exhibit a kind of stability, permanency and functional lifestyle which is equivalent to that of a traditional family unit. . . . The individual lifestyles of the residents and the transient nature of their residencies would not permit the group to possess the elements of stability and permanency which have long been associated with single-family occupancy.[202]

An approach that combines objective factors, such as sharing "economic responsibilities" and household tasks, with subjective factors, such as the stability and permanency of the relationship, would be a feasible way to define "family" that would presumptively include adult adoptees.

B. Designation of an Heir for Partners

As an alternative to adult adoption entirely, Professor Calvin Massey expands on an idea that has existed since Roman times: He proposes that states should "enable people to designate their heirs, to the partial or total exclusion of those persons who would otherwise be the actor's heirs absent the designation."[203] Massey argues that designating an heir is a good solution to contesting the will, which is a common problem when the decedent's estate plan is unpopular within the natural family.[204] In fact, the ability to designate an heir already exists in Arkansas and Ohio.[205]

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202. Open Door Alcoholism Program, Inc. v. Bd. of Adjustment, 491 A.2d 17, 22 (N.J. Super. Ct. App. Div. 1985).

203. Massey, *supra* note 101, at 581.

204. *Id.* at 583.

205. ARK. CODE ANN. § 28-8-102 (2004) (stating that "when any person desires to make a person an heir at law, it shall be lawful to do so by a declaration in writing in favor of the person, to be acknowledged before any judge, justice of the peace, clerk of any court, or before any court of record in this state"); OHIO REV. CODE ANN. § 2105.15 (LexisNexis 2011). Ohio also allows a person to designate an heir:

> A person of sound mind and memory may appear before the probate judge of the person's county and in the presence of such judge and two disinterested persons of that person's acquaintance, file a written declaration declaring that, as the person's free and voluntary act, the person did designate and appoint another, stating the name and place of residence of the other person specifically, to stand toward the person in the relation of an heir at law in the event of the person's

Why would designating an heir be better than an adult adoption? When the motivation for the adoption is to codify some type of legal relationship between partners, adult adoption (which creates the status of parent–child) "provides neither an adequate definition for the relationship resulting from the adult adoption . . . nor an adequate resolution of the testamentary and dissolution problems inherent in same-sex cohabitation."[206] It will also be useful in states that prevent partner adoption for public policy reasons, such as New York.[207] In New York, one partner cannot adopt another, but if one could designate the other as his or her heir, the underlying motivation for the adoption (presumably providing for the partner after death) would be fulfilled. Finally, another benefit of designating an heir instead of adopting an adult is that the designation of an heir is revocable.[208]

Designating an heir between partners would be practical, but when the motivation for the adoption is to codify an existing parent–child relationship or to bring the adoptee within a class gift, adoption seems to be the better option based on existing case law.[209] In *Blackwell v. Bowman*, the Ohio Supreme Court held that a designated heir could not inherit through his designator from the estate of the designator's brother.[210] Additionally, the Ohio Supreme Court has held that the children of the designated heir cannot inherit from the designator; the only relationship created by designating an heir is between the

> death. . . . From then on the person designated will stand in the same relation, for all purposes, to the declarant as the person designated could if a child born in lawful wedlock. The rules of inheritance will be the same between the person designated and the relations by blood of the declarant, as if so born.

OHIO REV. CODE ANN. § 2105.15.

206. Lisa R. Zimmer, Note, *Family, Marriage, and the Same-Sex Couple*, 12 CARDOZO L. REV. 681, 691 (1990).

207. *See In re* Adoption of Robert Paul P., 471 N.E.2d 424, 425 (N.Y. 1984) (stating that adopting a partner is "wholly inconsistent with the underlying public policy of providing a parent–child relationship for the welfare of the child.").

208. *See, e.g.*, OHIO REV. CODE ANN. § 2105.15 (stating that after one year, the declarant may have such designation vacated).

209. *See* Albert H. Leyerle, *The Ohio Designated Heir Statute*, 21 AKRON L. REV. 391, 399–400 (1988) (explaining that there are significant grey areas with the statute and that as opposed to adoption, the designated heir cannot inherit "through" the designator).

210. 80 N.E.2d 493, 494, 498 (Ohio 1948) (stating that "the rational interpretation of the language . . . is that when a declarant has designated an heir, that heir stands only as to declarant and not his family or relatives, in the same relation, for all purposes, as designee would if a child born in lawful wedlock; and that the rules of inheritance *as to the property of declarant* will be the same between him and the relatives by blood of declarant as if designee had been so born").

designator and the designated heir.[211] Thus, as it stands right now, designation of an heir would be a better option only for those who would be prohibited from adoption.

With the solution, the statutory rules create inherent difficulties in determining the property rights of the designated heirs and natural family members. For example, suppose the testator dies leaving a piece of real property to his children, then to their legal heirs. One of the testator's children did not have any natural children but had designated an heir under the statute. Should the designated heir be allowed to take the property after the designator's death? What if the language in the will had stated that the property would benefit the "issue of my body"? Should the court follow the progression of adoption, where adoptees may still be included in a gift despite language that limits gifts to the "heirs of my body"?[212] One can imagine a host of difficulties presented with designating an heir, such as how the designation affects the anti-lapse statutes and disinherited heirs. As a result of these difficulties, this solution works best with small and uncomplicated estates.

C. Uniform Law with Inclusive Policy Toward Adult Adoptees

The majority of the time, the goal of the adoption is to take in the person as a genuine member of the family. A default rule that uniformly recognizes the adoptee's inheritance rights is generally in line with the adoptor's motivation for the adoption. The UPC is highly influential in creating uniformity and instituting reform.[213] Today, the UPC suggests that if the transferor is not the adoptive parent, an adoptee will not take in a class gift unless: "(1) the adoption took place

211. *See* Kirsheman v. Paulin, 98 N.E.2d 26, 32 (Ohio 1951) (stating that "a 'designated heir' reaches the status of a child only upon the death of his designator, and if such designated heir predeceases his designator the children of the former do not become heirs at law or next of kin of the designator so as to inherit from him").

212. *See In re* Trusts Created with Agreement by Harrington, 250 N.W.2d 163, 167 (Minn. 1977) (holding that the adoptee was entitled to take from the trust established by her adoptive grandparent because of the presumption in favor of adoptees, even though the trust was for the benefit of the testator's daughter and the "issue of her body").

213. Roger W. Andersen, *The Influence of the Uniform Probate Code in Nonadopting States*, 8 U. PUGET SOUND L. REV. 599, 599–600 (1985) (stating that the UPC was adopted outright in fourteen states and highly influential in non-adopting states). In 1985, Andersen found more than fifty cases from non-adopting states where the courts "suggest[ed] UPC sections that legislators ought to consider and demonstrate[d] how advocates might effectively use the Code." *Id.* at 609. Advocates can use the UPC "as secondary authority in a manner similar to the restatements and as an aid to interpreting legislative history in jurisdictions that have considered specific UPC provisions." *Id.*

before the adoptee reached [18] years of age; (2) the adoptive parent was the adoptee's stepparent or foster parent; or (3) the adoptive parent functioned as a parent of the adoptee before the adoptee reached [18] years of age."[214] Although the age of eighteen is in brackets, signaling that the UPC does not anticipate uniformity on this issue, the format of the rule is restrictive and only includes adult adoptees if they meet one of the exceptions.[215] The UPC could create more uniformity and a more favorable policy toward adult adoptees. First, it could have a general policy of inclusion (with exclusion as the exception), and second, it could eliminate or raise the age by which the adoption must occur.[216]

The solution should be geared toward the status of adoptees within class gifts. There seems to be uniformity where the decedent is the adoptee's parent: the adoptee will be included within a class gift and the adoptee will be entitled to take intestate.[217] The status of an adoptee only becomes complicated where the adoptee could potentially be included within a class gift from a transferor who is not also the adoptor. Uniformity and inclusivity for adoptees in class gifts are beneficial for at least three reasons: First, many scholars approve of adult adoption, even for collateral reasons, such as denying standing to natural heirs.[218] Second, the adoption statutes purport to provide a total transplantation from the old family to the new family, which should include adult adoptees.[219] Third, some courts have recognized that it is the nature of the relationship between parties that is crucial, not the status of the blood relationship.[220]

A law that would create uniformity for adult adoptees' inheritance rights under class gifts is supported by scholarly approval of adult adoption.[221] For instance, Justice Holmes wrote that adopting another adult for the purpose of denying standing to relatives was "perfectly proper."[222] Another example is *In re Adoption of Swanson*, where the

214. UNIF. PROBATE CODE § 2-705(f) (2004) (amended 2008).

215. *Id.*

216. *See* Andersen, *supra* note 213 (explaining the great influence the UPC has over state probate laws).

217. Rein, *supra* note 1, at 733.

218. *See infra* text accompanying notes 222–225.

219. Rein, *supra* note 1, at 719.

220. *See* Patrick v. N. City Nat'l Bank of Duluth (*In re* Will of Patrick), 106 N.W.2d 888, 890 (Minn. 1960).

221. *See infra* text accompanying notes 222–225.

222. Collamore v. Learned, 50 N.E. 518, 518–19 (Mass. 1898).

adoptor sought "to prevent collateral claims . . . from remote family members."[223] The court stated that beyond the "common sense limitations," the motive behind an adult adoption is generally not relevant.[224] If scholars are willing to support adult adoptions, even for motivations that would disrupt the testator's testamentary disposition, it seems that, overall, there should be a more inclusive policy toward adult adoptees. One would have to think that the vast majority of adult adoptions occur for pure reasons, such as out of love and affection, rather than to upset a testamentary disposition, especially considering the permanence of adult adoptions once they are affected.[225]

In addition to general approval of adult adoption, a more inclusive policy toward adult adoptees is supported by the general policy of adoption statutes—total transplantation.[226] When the first adoption statutes were passed, adoptees were treated differently than blood relatives and were barred from inheriting from third-party donors under the "stranger-to-the-adoption rule."[227] In contrast, statutes today treat adopted children as "full-fledged" members of the adoptive family.[228] Today, the overarching goal of adoption statutes is to promote the best interests of the adoptee, a goal accomplished by totally transplanting the adoptee into the new family.[229] With the same "common sense limitations," this general policy of inclusion should be extended to adult adoptees.[230] Considering that the adoptee loses all rights to inherit from their natural family, there is a deterrent to adopting for deceitful reasons.[231]

In addition to scholarly support and the goal of total transplantation of adoption statutes, there is a public policy reason to create an inclusive

223. 623 A.2d 1095, 1096 (Del. 1993).

224. *Id.* at 1097, 1099.

225. Snodgrass, *supra* note 46, at 75 (reporting that adoption is permanent); *see also* Smith v. Reinhart (*In re* Will of Adler), 30 Wis. 2d 250, 262, 140 N.W.2d 219, 226 (Wis. 1966) (stating that "[a]doptions are almost without exception made for the purpose of making the adopted child an integral part of the family circle for all purposes").

226. Rein, *supra* note 1, at 719.

227. *Id.* at 771 (quoting Cahn, *supra* note 5, at 1128).

228. *Id.* at 772.

229. *See* Kelly v. Iverson (*In re* Estates of Donnelly), 502 P.2d 1163, 1166–67 (Wash. 1972); Rein, *supra* note 1, at 713, 719.

230. *In re* Adoption of Swanson, 623 A.2d 1095, 1099 (Del. 1993).

231. *See* WIS. STAT. § 854.20(1) (2009–2010) ("[A] legally adopted person ceases to be treated as a child of the person's birth parents" except where the person is adopted by a step-parent, in which case the adoptee is still treated as the child of the natural parent who married the step-parent.).

presumption toward adult adoptees: a "family" can be created just as much through adoption as it can through blood relationships. The Minnesota courts, in accordance with the statutes, have treated adoptees the same as natural children as long as there is not explicit language to the contrary in the testamentary disposition: "The family relationship is created far more by love, understanding, and mutual recognition of reciprocal duties and bonds, than by physical genesis."[232] If the adoptor and adoptee choose to undergo the irreversible process of legally codifying a parent–child relationship, they should be entitled to the benefits stemming from any natural family relationship, including rights to inheritance. Thus, the uniform policy should presumptively include adult adoptees within a testamentary disposition, with limitations upon such right as the exception.

VI. CONCLUSION

As summarized by the comparison of laws in Wisconsin, Illinois, Indiana, and Minnesota, the inheritance rights of adult adoptees vary across jurisdictions. The adult adoptee's inheritance rights depend on the status of the stranger-to-the-adoption rule in the jurisdiction, the age limitations for inheritance in the jurisdiction, and whether there is any language granting or restricting inheritance rights in the testamentary documents. Some states, such as Minnesota, have a very favorable policy toward adult adoptees and only restrict inheritance rights if the testamentary document explicitly prohibits adult adoptees from taking.[233] In contrast, Wisconsin restricts the right of adult adoptees to inherit from third parties, only allowing adoptees to inherit if they were adopted before the age of eighteen or if they were raised in the adoptor's household before the age of fifteen.[234] The majority of the time, the goal of the adoption is to make the adoptee a genuine member of the family. As it stands, states do not uniformly treat adult adoptees as genuine members of the family. A default rule that uniformly recognizes the adoptee's inheritance rights is generally in line with the adoptor's motivation for the adoption. Three proposals may help to remedy this inconsistency: First, "family" should be defined by looking at the functional role each member plays, as opposed to using marital

232. Patrick v. N. City Nat'l Bank of Duluth (*In re* Will of Patrick), 106 N.W.2d 888, 890 (Minn. 1960).

233. *See supra* text accompanying note 184.

234. WIS. STAT. § 854.20 (2009–2010).

status to define "family" and to determine the benefits that accompany that status.[235] Second, allowing a person to designate his or her heir is a partial solution for partners that are prevented from adopting or for partners who are discouraged from adopting by the awkward parent–child relationship that would result from the adoption.[236] Third, a uniform law that gives an adult adoptee the status of a natural child of the adoptor, without any age limits, would ensure the equal treatment of adult adoptees across the country.[237]

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235. *See supra* text accompanying notes 192–202.

236. *See supra* text accompanying notes 203–212.

237. *See supra* text accompanying notes 216–232.

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