The “Best Interest of the Child”:
A Critical Look at Complexity and Responsibility in
Child Apprehension and Adoption

by

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ABSTRACT

THE “BEST INTEREST OF THE CHILD”:
A CRITICAL LOOK AT COMPLEXITY AND RESPONSIBILITY IN CHILD APPREHENSION AND ADOPTION

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This thesis is an investigation of the ethical implications of the practice of the removal of children from birth mothers by child protective services, and the subsequent adoption of these children by other families. Using Michel Foucault’s method of discourse analysis, this thesis examines some of the language commonly used in discussion about child apprehension and adoption, terms such as “best interest of the child”, and “voluntary and involuntary relinquishment” to see how the use of these terms can create an understanding of the phenomenon that is not reflective of the reality and complexity of experience. By looking to the understanding of moral responsibility as put forward by Emanuel Levinas, this thesis considers some preliminary ways that child apprehension can be considered in ways that are more responsible and inclusive.
Dedication

For Dr. Karen Houle, Dr. Karen Wendling, and Dr. Maya Goldenberg, in gratitude for their insight and encouragement.

For Dr. Jean Harvey who started me down this path.

For Janet, Pam, and Nicola who solved my problems.

For countless friends and family members who loved and supported me, and listened to my rambling thoughts.

For my beautiful children and the mothers who gave them life.

And for all the other mothers.
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Introduction

Child adoption is a process that has occurred in different forms throughout history. It is a deeply complex, ongoing part of the human condition. Every adoption story is entirely unique. The process of adoption, the logistics of it, the reasons for it, and the public narrative about it shifts continually, making it difficult to find a single moral position in regard to it. Yet, despite the variations over time, the emotional weight of this phenomenon does not diminish. There will always be children born to parents who cannot care for them, and there will always be families who want to adopt these, or any children- an incredible mixture of joy and tragedy.

Modern Western adoption practice is seen as a positive thing, a way to solve several problems simultaneously. Birth mothers, who for various reasons are deemed unfit to care for their child are relieved of that responsibility by being able to give the child to someone else; a person who is considered better able to parent, and who desires to raise the child as though she was their own. The adopted child is saved from an unfortunate situation, and provided with a chance to meet her potential in a family that is better suited to meet her needs. It is a feel-good story: win-win-win. Adoption literature often refers to a triad, consisting of birth family, adoptee and adoptive family. This language implies a balanced relationship, with each participant holding equal status.

However, even a cursory glance at the way adoptions actually happen shows the flawed nature of this narrative. For instance, in international adoptions the birth family is often completely unknown. In domestic open adoptions, even when the adoptive parents are chosen by the birth parent, it is legally the right of the adoptive parent to decide the parameters of openness- the role, if any, that the birth parent will have in the child’s life in the future. This triad completely hides the pivotal role of a fourth agent: adoption agencies and child protection
agencies. And the narrative collapses entirely in closed adoptions, where the child is taken from the birth mother against her will, and then adopted out to a new family by a Children’s Aid Society (CAS). This is the scenario that I will focus on in this thesis.

I began this project for selfish reasons- a strong desire to make sense of my own experience with adoption. In 2002 my partner and I adopted a 13 month old boy from the Toronto Children’s Aid Society (CAS). Our child was a “Crown Ward” meaning that the rights of the birth parents had been permanently terminated. He had been apprehended at birth by CAS - taken from his mother at the hospital and placed directly into foster care. We were told that his parents were homeless drug addicts who were unable to parent their son. We knew a few other facts as well. For the birth mother, our son was the first live birth after nine pregnancies. He was born addicted to heroin and several other illegal substances. He had been exposed to heavy maternal alcohol consumption and was diagnosed with Fetal Alcohol Syndrome (FAS)\(^1\). These facts “confirmed” to us that our son was better off with us; we were entitled to parent him, and the birth mother was not. It was a closed adoption, meaning that no contact with the birth parents could occur. In 2003 we adopted a second child, also from Toronto CAS- a 6 month old girl. Same story. Apprehended at birth, parents who were homeless addicts, FASD, Crown Ward, closed adoption.

We accepted this account of the origins of our children without question. When we thought about the birth parents at all, it was with a sort of vague gratitude that they had selflessly chosen to give their children up so that they would have a better future with us. Occasionally it was with anger, as we coped with our children’s disabilities that seemed to us to be the fault of

\(^1\) Fetal Alcohol Syndrome (FAS) is a diagnosis that falls under the umbrella of Fetal Alcohol Spectrum Disorder (FASD), and is caused entirely by maternal drinking. Other possible diagnoses are Alcohol Related Neurological Defects (ARND) and Partial FAS (pFAS). All forms of FASD cause significant physical, mental, behavioural and learning disabilities with lifelong implications. More information can be found at: http://www.fasdontario.ca/cms/
the birth mothers. As they grew up we explained the situation to our children with pat phrases that we had learned from adoption books: that their birth parents “loved them very much but could not care for them”, and that was the reason they had been given to us as their “forever family”. It did not occur to us then that anything was missing from, or wrong with, our working narrative.

In 2008, both of my sisters had babies. My children were delighted with their new cousins. Then, after a few visits they asked me, “When will the babies go to their ‘forever homes’?” In that moment, I felt the utter horror of even imagining my sisters’ babies being taken from them, and the equal horror of knowing that I had been complicit in doing that very thing to someone else. As I worked through this realization, discussing it with friends, family and other adoptive parents I found that most people rejected the idea that anything wrong had been done for two reasons. The first was that the children were “better off” with me, meaning that they would be more likely to thrive, and be happy and healthy with good opportunities in the future. This assessment was almost certainly empirically true, but not wholly satisfying. The second was the assumption that for mothers who were homeless and had addictions, the loss of a child was not very significant. People who are addicts care much more about drugs than their children, I was assured. After all, it had come down to a choice between the child and the drugs, and they had chosen the drugs. This assessment was perhaps not so empirically sound. I was also dissatisfied with this response, and could not shake the unsettled feeling that something was missing in the ways that were available for me to talk about and think about this experience.

I began volunteering for an organization that worked with people living in poverty, individuals struggling with addictions, mental health issues and insecure housing. As I built

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2 By this time my marriage had broken down, and so the rest of this narrative will use only my own perspective.
relationships in this community I began to hear the stories. Many of the women I met had lost children to CAS in closed adoptions. For not one of these women was this loss insignificant. All of them spoke of the agony, the devastation of losing their children, the pain that did not go away. They spoke of how they longed to see their children just one more time. That they would give anything just for one picture, just to know they were safe and well cared for. I saw women lose custody of their children and then slide deeper into their addictions. I saw suicides and overdoses that followed apprehension of their children. To me, the fact that the adopted children were quite possibly “better off” somewhere else did not seem like a full or adequate justification for this accepted master narrative of child apprehension and adoption in the face of these other experiences, and I began to ask, “What is missing here?” This was the start of my thesis.

When we encounter these missing pieces, as I have done in the master adoption narrative, we have several options for how to proceed. First, we could ignore it. The language available and beliefs about adoption fit comfortably for many people, so it could be reasonable to say that the world is an imperfect place- not all interests will be served, but we can make the best of it. Secondly, we can try to deal with the discomfort by justifying it. In the case of apprehension and adoption, we could apply a kind of cost/ benefit analysis, and conclude that the current policies do support the “best interest of the child”, making the current narrative morally acceptable, even if it is incomplete. Or finally, we can explore it, and let ourselves be addressed by it. We can examine it, trying to see where it comes from, and how it occurs. By doing so we might uncover the complexities of apprehension and adoption that can be hidden by standard adoption rhetoric. This exploration is the work ahead in this thesis.

When we come to a place where the options of ignoring or justifying are not acceptable, as I have, we must then find another way to approach it. As we will consider more
comprehensively in Chapter 1, the frameworks that we generally use to justify our choices and beliefs seem to fail in the full face of the complexities of apprehension and adoption. If we accept the cost/benefit analysis that looks to cases of children who have been harmed in the custody of addicted birth parents as a justification for apprehension, we see it also opens the door to an equal number of cases where children have been harmed in foster care or adoptive homes. We cannot find clear justification for one choice or another when we base our understanding simply on anecdotal or statistical information. Beyond the question of whether or not this approach is effective, we are left with the uneasy feeling that the ethics of apprehension and adoption cannot just be about the body count. Another approach can place the interests of the child higher than the interests of the people around her, including the birth mother. The right thing to do then, we assume, is the thing that best provides for the needs of the child. Again, this approach leads to problems. What is genuinely in the “best interest of the child” is not always clear. As we will explore in the next chapter, by applying this socio-cultural framework in the past we have believed ourselves, as a society, to be acting in the best interest of children on many occasions. One was the policy in Canada during much of the 1900’s of removing indigenous children from their homes and placing them in residential schools. In this case we now know that though it was genuinely believed to be in the best interest of children, it was in fact catastrophically, tragically wrong. We need another way to think and talk about this difficult issue, a way that normative ethical frameworks and moral principles- such as “the best interest of the child”- do not adequately provide.

The primary work of this thesis will use a method called discourse analysis. Employed most famously by Michel Foucault, discourse analysis is a way of looking a topic like apprehension and adoption not as a fixed entity, but as composed of an almost infinity of parts
that work together to create the meaning about that topic. It can be used to evaluate any or all parts of a discourse- the behaviours, relationships, personae, societal norms and spoken and written language. Rather than accepting that the way we talk and think about things as the totality of what they actually are, Foucault, in the opening pages of *The Archaeology of Knowledge* says, “We must question these ready-made syntheses, these groupings that we normally accept before any examination, those links whose validity is recognized from the outset; we must oust these forms and obscure forces by which we usually link the discourse of one man with another; they must be driven out from the darkness in which they reign.”

Beginning in the second chapter, I will explain discourse analysis as a method of inquiry, and then, using that methodological frame, look at some commonly used language in apprehension and adoption. In the kind of situation that I am looking at, children are “apprehended” from birth mothers by child protection agencies. These birth mothers are then said to “relinquish” their children, either “voluntarily”- by their own choosing or “involuntarily”- by an order of the court, making them available for adoption- a process that is in “the best interest of the child”. I will examine how these terms are used in spoken and written discourse about this issue in ways that point to conclusions that distort the full reality. Then, in the third chapter, I will look to common characterizations about birth mothers involved in apprehension and adoption that are used in a way that oversimplifies their experience. Finally, I will look at the way this language use and characterization works to erase the birth mother from the adoptive narrative- an omission that I will argue can be redressed by Levinasian ethics.

Foucauldian discourse analysis will allow us to break open the apprehension and adoption narrative in order to see it more clearly- my main goal. As a secondary element, near the end of this thesis I will look to the work of Emmanuel Levinas and Kathryn Pyne Addelson
for a starting point in how we could put it back together- to begin to think about the ethics of this issue in a new way. My intent is not to solve the problem, or even to make prescriptive recommendations but only to identify a starting point that can potentially lead us to a more inclusive discourse about apprehension and adoption. Emmanuel Levinas, a philosopher and theologian, encountered a similar failure of ethical frameworks when confronted by the horror of the Holocaust in which many of his family members were killed. Rather than trying to identify reasons for this unimaginable evil, or to justify it away, he looked instead at moral philosophy itself, and how the normative principles of ethics (ways of thinking, moral ideas, words about good and bad that intellectuals put into cultural circulation) not only failed to explain it, but might actually have contributed to the psychological and value climate from which the Holocaust was made possible. For example, numerous people accepted that the policy of extermination of Jewish people in World War II was a greater good- a normative, utilitarian concept that justified the suffering of some for the greater good of many, and made it possible for individuals to transfer the responsibility for bad outcomes to someone else. Levinas' response to the complicity of traditional ethical frameworks was to develop a philosophy that made absolute personal moral responsibility to the Other the starting point and primary focus of philosophy. He wrote,

Ethics, concern for the being of the other-than-one-self, non-indifference toward the death of the other, and hence, the possibility of dying for the other- a chance for holiness- would be the expansion of that ontological contraction that is expressed by the verb to be… opening the order of the human, of grace and of sacrifice. This human inversion of the in-itself and the for-itself (of ‘every man for himself’) into an ethical self, into a priority of the for-the-other… unique because of its chosenness for a responsibility for the other man- inescapable and non-transferable.3

To Levinas, the response of philosophy to the Holocaust was an example of the tendency to respond to suffering and injustice with theory—by offering justifications, or classifying it, rather than actually coming to the aid of the suffering people. For this reason, intellectual engagement with horrific events can be unsatisfying. Traditional ethical frameworks do not try to answer the primary questions: How could such a thing happen? How can it be that so many witnessed this horror unfold and did nothing? Ethics failed to address the fundamental thing that suffering demands: response in action. To take injustice seriously, to truly understand it and take responsibility for it, we cannot simply explain or justify. We also have to reach out to those who are suffering.\(^4\) Levinas writes, “The very phenomenon of suffering… is, in principle, the pain of the other. For an ethical sensibility, confirming, in the inhumanity of our time, its opposition to this inhumanity, the justification of the neighbour’s pain is certainly the source of all immorality.”\(^5\) Jules Simon, in his own work on Levinasian ethics explains how this approach is not just applicable to horrific failures such as genocide, but to day-to-day injustice as well:

> And while the slaughter of many thousands of innocents defies comprehension, what of the neglect or the intentional avoidance that has resulted in the continued murders and loss of lives on a daily basis in our own neighborhoods? By any reasonable or quantifiable standards of measurement, we are failing in compassion, generosity, and kindness for each other.\(^6\)

In this thesis I will not exhaustively work through all the implications of a Levinasian approach, but instead suggest that Levinasian ethics gives us a different place to start. It offers us a way to respond to the Other, and approach apprehension and adoption with “compassion, generosity and


\(^5\) Levinas, Entre Nous, 99.

kindness” for all participants which, as I will show, can be lost in traditional ethical frameworks—despite best intentions.

While Levinas gives us a conceptual staring point to reconsider the complexity and responsibility of apprehension and adoption, Kathryn Pyne Addelson gives us some practical steps forward in her analysis of “moral passages”. Like Levinas, Addelson also identifies the problems of traditional ways of “doing” ethics. By looking at many examples of how moral norms change over time, on issues such as the racial segregation, and the use of birth control, Addelson shows how individualist ethical frameworks create theories that hide the function and responsibility of experts. For example, in the United States in the late 1800’s, maternity homes existed to seclude white women who became pregnant out of wedlock. Before World War II, these homes were founded and staffed by religious people such as nuns (the experts), and “the time-honoured explanation of the girl’s behaviour was that they were ‘nice girls who made a mistake and repented.’” After World War II, social workers took over much of this work, as the moral problem of unplanned pregnancy began to be seen more as a psychological failing than a spiritual one. Instead of being “nice girls”, the social workers (the new experts) determined that “becoming an unwed mother was caused by a prior, unhealthy psychological state that showed in irrational patterned behaviour. They took their professional job to be helping the young women break the pattern and stop ‘acting out’ in ways that would put them at risk of becoming pregnant again.” Addelson points out that when we take an individualist approach, and believe that morality is about beliefs and values alone, we fail to see the role of experts as instruments in a morality as a “way of defining reality, time and place, and human knowledge, action, and life”.  

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7 Kathryn Pyne Addelson, Moral Passages: Toward a Collectivist Moral Theory, (New York: Routledge, 1994). p.120.
8 Addelson, 121.
9 Addelson 121.
She demonstrates that professionals have a role in defining public need and good that they serve. So, in looking at an organization such as CAS, we will see that the role of the “expert”-generally professional social workers- does not simply make and enforce rules by setting standards and protocols, they actually define the public good that they are mandated to uphold. Addelson argues further that when a moral problem is identified- as I will do in my examination of apprehension and adoption- it is the particular responsibility of the ‘knowledge-makers’ to take steps to make that problem public, not for the purpose of casting blame, but in order to create an inclusive future - a collective understanding.

In doing this work, I will examine the narrative of a very specific kind of adoption: one that begins with the apprehension of a child by the Children’s Aid Society (CAS), generally in cases of maternal addiction, mental health issues, and poverty. This is followed by the parental rights of the birth mother being severed (either by her “signing off” on her rights, or having her rights revoked by the court), making the child a Crown Ward, and available for adoption. These adoptions are “closed”, meaning that the child will have no contact with the birth family. Other kinds of adoption, such as international or domestic open adoptions (where contact with the birth family is maintained to some degree) also have interesting ethical considerations, yet to broaden my focus to include these issues might make a paper of this length incoherent. For the most part I will be looking at the experience of birth mothers. I made this choice because of the special role that mothers have in connection to children. This is not to suggest that birth fathers and other biological family members do not have a significant role, and are not deeply affected by child apprehension, only that their role is beyond the scope of this paper. As a kind of parallel to
the experience of birth mothers I will also look at the experience of adoptive mothers, again without intending any judgement about the importance of the rest of the adoptive family.

Before we begin, I need to be very clear about what this project is, and what it is not. It is not my goal to assign blame or praise to any of the participants in apprehension and adoption. I will not be dismissing all common-sense ideas, such as the need for child protection, and the need for an agency that does this work, though I will be taking a closer look at the common sense principle that the “best interest of the child” is paramount. Though at the end of this paper I will sketch out how a more ethical discourse could look, I will not be drawing conclusions about specific apprehension and adoption policies- either as they exist now or as they could exist in the future. Instead, I will make a close examination of the discourse around a certain kind of adoption, and try to uncover what is concealed by the master narrative of apprehension and adoption. I will consider how the missing parts in this narrative can allow for injustice and marginalization. My goal is to find a way that discourse around this issue could be more ethical, more inclusive and more cognizant of its complexity.
Chapter 1: Apprehension and adoption as “the best interest of the child”

The best interest of the child

When we talk and think about apprehension and adoption, the idea of “the best interest of the child” carries enormous moral weight. This standard is used as a justification for all current decisions made about child apprehension and adoption, articulated throughout official policy and integral to common wisdom. For this reason, we will begin our analysis here—looking at the reasons for and the wider effects of the deployment of this foundational concept. First, I will briefly outline one aspect of Foucault’s view of history, and then demonstrate that this framework gives us a way to look at apprehension and adoption that offers a way out of the cycle of policy reform, and gives us another way to think about ‘the best interest of the child’. 10

Michel Foucault (1926-1984) was a French philosopher whose major works examined the components of institutions such as health care and the prison system. He looked at the history of these institutions—not to offer conclusions about ethicality or necessity, not to state how they came to be the way they are in the present, but to explore the production of truth. Foucault says that there is no fixed and definitive structuring of either social (or personal) identity or practices; rather both the formation of identities and practices are related to, or are a function of, historically specific discourses. 11 For example, in Discipline and Punish, Foucault examined the history of penal justice and the punishment of those deemed to be criminals. He

10 This examination will first focus on the function of the ‘best interest of the child principle’- its moral weight in decision making and common understanding, rather than the appropriateness of the concept itself. The question of whether or not this principle is a valid standard for decisions about child welfare is a separate discussion, and a potentially worthwhile project- but one that I will not undertake in this thesis.

demonstrated that punishment throughout history has played a complex social role, as a way of exercising power, as a political tactic, and as a way to address collective responsibility. He says,

> We must first rid ourselves of the illusion that penalty is above all (if not exclusively) a means of reducing crime and that, in this role, according to the social forms, the political systems or beliefs, it may be severe or lenient, tend towards expiation of obtaining redress, toward the pursuit of individuals or the attribution of collective responsibility. We must rather analyse the ‘concrete systems of punishment’, study them as social phenomena that cannot be accounted for by the juridical structure alone, nor by its fundamental ethical choices; we must situate them in their field of operation, in which the punishment of crime is not the sole element; we must show that punitive measures are not simply ‘negative’ mechanisms that make it possible to repress, to prevent, to exclude, to eliminate; but that they are linked to a whole series of positive and useful effects which it is their task to support (and in this sense, although legal punishment is carried out in order to punish offenses, one might say that the definition of offenses and their prosecution are carried out in turn in order to maintain the punitive mechanisms and their functions).  

So, a Foucauldian view would say that although the offences that are deemed “criminal” may change over time (such as laws about homosexuality, or rape within marriage), and the methods of punishment may change over time (such as torture, or imprisonment), the overall role and functions of state-sanctioned punishment in society has remained the same— a complex system of positive and negative effects. Further, the same personae have existed throughout this history—the criminal, the victim and the state-authorized punisher—even though different individuals have filled these roles. This sort of picture is in contrast to the view that sees history as a discrete series of events that follow each other, but can be identified as distinct narratives.

For example, view of separate narratives may say that criminals are no longer tortured as a means of punishment, because society has changed and developed new sensibilities that make torture undesirable. Now that we “know better”, we do things differently, and this time “we are

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Foucault says that this is not the case—torture as punishment performed a function, and we have simply developed new ways to maintain that same function.

Following Foucault’s model, using the example of apprehension and adoption in the Aboriginal communities in Canada, I will suggest that although the methods and appearance of apprehension and adoption have changed over time, the purpose and function of this process in society and the moralizing weight attached to the idea of “the best interest of the child” has remained the same throughout. This idea can be traced from the practice of placing Aboriginal children in residential school beginning a century ago, to the current practices of Children’s Aid Societies.

In Canada, CAS, representing the government and funded by tax dollars, officially positions itself in working for “the best interest of the child”. In this way they appear to avoid taking a side—neither favouring the birth parents nor favouring the adoptive parents. The self-declared mandate of Children's Aid Societies is to “protect children from abuse including neglect, help parents and caregivers build healthy families and provide a safe, nurturing place for children and youth to grow up and realize their full potential.” The “best interest of the child” is the justification for apprehension and the motivation for adoption. This is not the belief that families apart from the child do not matter, but that the families are mainly of instrumental value, with the most important raison d’être of the family (both adoptive and biological) to improve the circumstances of a child. On its face this seems to be the exactly right position for CAS to take. This is powerful rhetoric. No one would argue against the fact that it is the children who are the

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most vulnerable in difficult family situations, and most in need of advocacy. Further, it is most certainly the case that child protection is both necessary and laudable.

This principle of “the best interest of the child” is also a legal standard, often applied in cases of divorce, a principle developed over time through legislation and case law. This principle results in a right of the child and a corresponding obligation upon the parent. When custody and access are disputed in a court of law, a child’s right is considered paramount to all other rights; this means that the court will consider only what is in the best interests of the child (italics mine). A parent’s interests, however sincere and pressing, are second to those of the child.”14 It is also a Human Rights standard. The United Nations Convention on the Rights of the Child states “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration” (italics mine).15 This demonstrates the moral weight of this phrase; it is not a minor consideration, it is the primary criterion that determines whether an act of child protection is right or wrong. Therefore, when making decisions about child protection, to think about what is in the best interest of the child, and to act in that way seems to discharge our moral responsibility.

But when we look at the practices of child apprehension and adoption over the last century we can see that even though “the best interest of the child” was always the underlying principle, the policies of what that child protection was have changed significantly and continue be reformed even to this day. We could look at this phenomenon in one of two ways. First, we

could understand each policy reform as a separate incident: “We believed that we were acting in the best interest of the child by doing x, but we found that we were wrong. Now that we know better, we will do y, and this time we are most certainly acting in the best interest of the child”.

Or, we could look at it in a way that Foucault provides, by identifying an historical continuity and the functions of concepts. The following brief account of the history of child apprehension in the Aboriginal communities of Canada will demonstrate the value of Foucault’s framework.

**An illustration: “The best interest of the child” and the Aboriginal people in Canada**

Throughout the last 130 years of Canadian history, “the best interest of the child” has been a guiding principle used to justify the apprehension of Aboriginal children from their families. First called “aggressive civilization”, one report called “Report on Industrial Schools for Indians and Half-Breeds” (1879) advocated for compulsory residential schools saying, “If anything is to be done with the Indian, we must catch him very young. The children must be kept constantly within the circle of civilized conditions.” The stated purpose of this was assimilation, rather than direct child protection, but the belief was clearly that Aboriginal children would have better, more productive lives- it would be in their best interest- if they could be fully integrated into Canadian society through education away from their families. By 1920, residential schools were mandatory for all aboriginal children. In the 1950’s the public began to realize the disastrous effect of the residential schools for children and began to phase them out. One report cited the lack of adequate funding for the schools that resulted in malnutrition, unsafe living conditions, and poor health for the residents. Rather than upgrading the system, the report
concluded that “with "the best interests of the Indian children" in mind, it was more sensible to close the system down”.

Instead of being the norm, residential schools would now be "a supplementary service" for children "who for very special reasons, cannot commute to federal day schools or provincial schools from their homes." The new organizing principle of the new policy was "that in educational services, everything possible will be done to enable families to stay together, so children will not have to be separated from their parents needlessly." With this mandate, child welfare organizations began to apprehend Aboriginal children and placing them in white foster homes. This was coined “the 60’s scoop” and again was motivated by the principle of the best interest of the child. Thousands of Aboriginal children were apprehended across Canada. In British Columbia, for example, in 1951, twenty-nine Aboriginal children were in provincial care; by 1964, that number was 1,466. Before the “Scoop”, Aboriginal children had represented only 1 percent of all children in care, but by the mid 1960’s this had increased to over 34 percent. This occurred with no understanding of cultural differences. For example, “when social workers entered the homes of families subsisting on a traditional Aboriginal diet of dried game, fish, and berries, and didn’t see fridges or cupboards stocked in typical Euro-Canadian fashion, they assumed that the adults in the home were not providing for their children”. Again, this policy turned out to be wrong and harmful- not in the best interest of the child after all.

19 Hanson, “The Sixties Scoop and Aboriginal child welfare”
Now, cultural understanding of aboriginal families is an important part of CAS policy. For example, Quebec’s Youth Protection Act says “Every person having responsibilities towards a child under this Act, and every person called upon to make decisions with respect to a child under this Act shall, in their interventions, take into account the necessity…of opting for measures in respect of the child and the child’s parents…which take into consideration…the characteristics of Native communities”. Yet, even now, aboriginal children are apprehended at a much higher rate than other children. A 2008 report from the Auditor General of Canada found that 51% of all children in care in British Columbia are Aboriginal, even though Aboriginal people comprise only 8% of B.C.’s population.

This ongoing removal of children from families in the interest of child protection— from residential schools onward— has been incalculably devastating to Aboriginal communities:

The removal of children from parental control was particularly devastating to the family systems of First Nations communities. In the residential schools, funding by the Federal government, administered and operated by churches, parents had no control over the choice to send their children to school or over what their children learned, and the critical skills needed for parenting were not handed down to the children. Young children were forced to abandon their native languages to speak English, resulting in the severing of vital ties to their families and cultural environments. On a psychological level, First Nations children learned fear, self-hate and anger. Loss of their identity became acute. The damage caused indescribable pain. This suffering manifests itself throughout many First Nations communities and has a direct impact on alcohol and drug abuse, suicides, high incarceration rates, tragic deaths and the general disarray of First Nations communities.

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This brief account of the shifting understanding in Canada over the past century of what constitutes “the best interest of the child”, and the frequency with which the previous understandings are later seen to be deeply wrong gives us a reason to take a second look. Every step of the way, policy makers, child advocates, common wisdom- all were certain that the best interest of the child was being achieved. Every time. And every time it was eventually realized not only that it was wrong, but that it was terribly wrong, and countless people suffered for it. The tragic history of child apprehension in the Aboriginal community is just one example.  

As Foucault concluded from his own historical accounts of ideas, if we view our history as a series of unrelated events without taking the time to notice the patterns and similarities, we condemn ourselves to a moral certitude that is not responsive or reflexive. We will not approach current policies in regard to child apprehension with humility or an adequately open mind. Currently, children are apprehended when the birth mother suffers from addiction, mental health issues or insecure housing. Most people, again citing the “best interest of the child” would quickly agree that apprehension in these circumstances is both necessary and good. This is the sentiment that was expressed to me many times- that my children were “better off” with me. No one wants a child to be left with a mother who is not in a condition to parent adequately. Yet, the same certainty, the same concept- the same common wisdom- also supported the apprehension of children from aboriginal parents, also genuinely seen to be in the best interests of those children. Undoubtedly there are some instances where this was the case. But overall it was wrong, and had a devastating effect on many lives. For this reason, even if we sincerely believe we are acting in the best interest of the child, even if the right course of action appears

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23 In Chapter 2, I will explore the implications for the mothers of the children who were apprehended, specifically considering young unmarried women in the 50’s and 60’s, who lost their children to adoption, often without their consent. This is another example of policy justified as being in the best interest of the child, but later changed as the detrimental effects on both children and mothers were realized.
obvious, this claim alone should not make us abandon further exploration. With this in mind, I will now look at the reasons that we might accept simple “best interest of the child” arguments for current practices of apprehension and adoption, and how we might move past those arguments to a deeper critical analysis.

**Are current policies of apprehension and adoption in “the best interest of the child”?**

As we have seen, historically acts of child apprehension seen to be the right thing to do have often not yielded good outcomes for the children involved. We will now look at current practice to see if it is the case that children *are* in fact better off when they are declared Crown wards and placed in adoptive homes. Apprehension and adoption practices rely on a narrative that imagines the birth mother acting as a free agent. She can either make a selfless choice for her child- understanding that she is unable to parent adequately, and relinquishing her child to the care of CAS, or she can refuse to act in the child’s best interest, forcing CAS and the courts to terminate her parental rights. Then, the story continues, the child is adopted by a family that is better equipped, and generously willing to raise her as though she was their own biological child. In the next chapter we will look at the serious flaws and omissions in that narrative. But for now we will note that this narrative is attractive and simple, depicting a win-win process that is best outcome for everyone involved, particularly the child. Since this narrative is justified by the conviction that it provides the best possible outcome for the child, after our earlier analysis of this concept we are forced to consider- is this really true?

One of the expectation from such a narrative is that children will feel grateful and lucky that they have been saved from a bad situation, having been provided with the many benefits that adoption entails. Undoubtedly, some adoptees feel that way, but for others, there is more to the
experience. Shaaren Pine, in an article for the Washington Post entitled, “Please don’t tell me I was lucky to be adopted” recounts her experience of being adopted and the difficulty she had in expressing her range of feelings honestly. “My life was enviable in too many ways to mention. But what’s also true is that adoption is a traumatic, lifelong experience that is rarely recognized as one. Unfortunately, there is no way to convince a non-adoptive that adoption is hard and that its effects continue into adulthood unless that person is willing to hear it. And in my experience, few have been. For me, being an adoptee is like getting into a horrible car accident and surviving with devastating injuries. But instead of anybody acknowledging the trauma of the accident, they tell you that you should feel lucky.”

Many adoptees describe the experience of feeling disconnected; that they did not belong in their adoptive family. One said, “I know very few details about where I came from. I have always wondered who I really am. Even though I have parents who love me, I still have always felt a sense of being an actress dressed up as someone else playing a role in someone else's life”. Another adoptee wrote, “Every birthday I used to wonder if my mother was thinking about me. And I wondered what my body would look like as I got older. I had no one to look at to see who I’d resemble.”

Another assumption built into the master narrative is that all children who are apprehended will, in fact, be placed in good permanent homes. Though this is certainly a possibility, it is a little known fact that very few children who are apprehended are ever adopted. Though exact numbers fluctuate slightly over time, in any given year in Ontario there are about 20,000 children who are in the care of CAS. Of these children, about half are Crown Wards-

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24 Shaaren Pine, “Please don’t tell me I was lucky to be adopted”, The Washington Post, Jan. 12, 2015. http://www.thestar.com/life/parent/2015/01/12/please_dont_tell_me_i_was_lucky_to_be_adopted.html?app=noRedirect

meaning that CAS is the official parent, and the rights of the birth parents have been permanently terminated. Of those children less than 10 percent are adopted each year. The remaining children stay in foster care or institutions under they are legally adults, and many are moved frequently. The outcomes for these children are grim. One government report says, “Former Crown wards who age out of the system are less likely to finish high school, more likely to become parents themselves at a young age, more likely to be users of the mental health system, more likely to require social assistance, more likely to rely on homeless shelters, to experience poverty as adults and more likely to be in conflict with the law. The long-term costs to society when children do not have permanent homes are staggering. The human costs, in terms of personal suffering and unfulfilled potential, are heartbreaking.”

This assessment of the outcomes for children who are apprehended is markedly similar to the outcomes for aboriginal children noted in the last section. These facts make the “best interest of the child” justification for the child apprehension from the birth homes in the first place more questionable.

In a practical sense, a look at these other outcomes gives good reason to re-evaluate the common wisdom around child apprehension and adoption- a worthwhile result. There is no knock-down evidence to suggest that current policies are “right” or that they consistently provide outcomes that are in the best interest of the child. However, the process of deploying statistics and anecdotal evidence to support or refute a policy or common wisdom distracts from the actual question at hand. Instead of actually talking about apprehension and adoption, it leads to an endless cycle of competing facts- the number of homeless Crown Wards living on the streets, the


number of adoptees who graduate from university, the number of children who live in multiple foster homes. We suddenly find ourselves in a kind of utilitarian cost-benefit analysis, trying to determine the proper course of action - i.e. whatever provides the best outcome for children - through more studies, or more statistics, or more social workers. We have seen that this approach has continually gotten it wrong. By trying of reach conclusions and certainty about what is best, we are already moving away from an ethical position. A utilitarian framework is not able to provide us with satisfactory answers about apprehension and adoption - we will remain mired in this cycle of making policies that seem right, realizing they are wrong, and making new policies, and the human cost will continue to accumulate. We need another way to talk and think about this issue.

Now that the rhetoric of “the best interest of the child” as a justification for apprehension and adoption policy in the past and present has been destabilized - not rejected or refuted, but instead opened up to further analysis - our next step is to find a way to consider this master narrative from a new angle. In the next chapter I will use Foucauldian discourse analysis to explore the beliefs and assumptions that form the unseen foundation of this narrative. First I will lay the groundwork by looking at discourse analysis as a methodology, specifically its identification of binary pairs, to see how this approach can provide new insights. Then, in Chapter 3, I will apply this methodology by looking at words and phrases we commonly use. In this way I will try to uncover how the language we use allows us to form and maintain beliefs about apprehension and adoption without adequate critical thought.
Chapter 2: Discourse analysis: theoretical groundwork

Discourse as meaning-making

We will now return to Foucault, taking a step away from the practical considerations of apprehension and adoption policy, to understand his theory of how meaning is created through discourse. In the introduction to his work on health care in France from 1780 to the present entitled *The Birth of the Clinic*, Foucault says, “What counts in the things said by men is not so much what they may have thought or the extent to which these things represent their thoughts, as that which systemizes them from the outset, thus making them thereafter endlessly accessible to new discourses and open to the task of transforming them.” In *The Archeology of Knowledge* he writes that discursive practice “is a body of anonymous, historical rules, always determined in time and space, that have defined a given period, and for a given social, economic, geographical or linguistic area, the conditions of operation of the enunciative function”. By the term “enunciative function”, Foucault is pointing to the conditions in which a statement is said, rather than the statement itself. Statements do not exist in isolation— they always involve a position that relates them to other statements. In other words, rather than imagining discourse as *reflective*, or *representative* of the meanings inherent in societal formations, Foucault sees discursive practice itself as having the function of *creating* meaning. “The question posed by language analysis of some discursive fact or other is always: according to what rules has a particular statement been made, and consequently according to what rules could other similar statements be made?”

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Foucault employed a method called discourse analysis in order to call attention to the way that discursive practice - such as language-use (spoken and written), social norms and beliefs - function to create meaning in society. Discourse can be divided into discursive practice - the norms around what is being said (and not said) and non-discursive practice, which includes legal, political and cultural norms. Thus, discourse in this context includes behaviours, relationships, societal norms and spoken and written language, as well as the “gaps” - the silences and the omissions - in between. I am particularly interested in these gaps, and how they can play an equally vital role in truth-making as the visible parts of discourse. Foucault discovered that regardless of the sort of practice or institution being investigated, regardless of its place in history, there is always a system of rules in place over discursive practice that allows (or even requires) some things to be said, and some things to be left unsaid. There are always some people who are heard, and some people who are not heard. This is a necessary binary: all groups by their very nature exclude some and include others. Without this there would be no group.

Discourse analysis can be used broadly across disciplines, from many perspectives and for many purposes. It can be used to gain insight into a discipline as a whole, or of a specific phenomenon. One example of this could be a discursive analysis of contemporary psychology. Cognitivism is a traditional approach to understanding language from a psychological perspective. This approach sees written and spoken language as either a reflection of the external world or a product of underlying mental representations of this world. This is a dualist approach; the individual and society are seen as separate entities, and the individual, acting as an autonomous agent, gathers information from the social world.

The social world is treated as information to be processed, and people are understood as isolated information processors who, by way of cognitive processes, observe the world and thus accumulate knowledge structures and experience that govern their perception of the world….The assumption that it is universal, individual cognitive processes that
underpin individual and collective action is integral to the cognitivist view of the individual as an isolated, autonomous agent.\textsuperscript{31}

This approach can be challenged by a discursive analysis of psychology, which sees written and spoken language as constructions of the world oriented towards social action. “Language is not seen as a channel that transparently communicates a pre-existing psychological reality which is the basis of experience; rather, subjective psychological realities are constituted through discourse, defined as situated language use or language use in everyday texts and talk”.\textsuperscript{32} This method looks at the meanings that are given to experience by the words that are available, and how the meanings then function to produce the experience, rather than being simply descriptive of a person’s “having” an experience. Rather than categorizing people according to experiences they “have”- as mothers, criminals or victims, to name just a few- discursive psychology seeks to understand the way that these categories are constructed in a way that we see these events somehow as “theirs”.

The purpose of this method of inquiry then is to examine societal phenomena- in this case apprehension and adoption- to determine what is being said, and what is not being said, what is presented as a norm and what is pathologized, so that common understanding of meanings and relationships can be tested and new insights revealed. Dr. Karen Houle, in her book \textit{Responsibility, Complexity and Abortion} noted, “A discourse is a powerful, shaping force. It is the device through which the complex messy world we are immersed in selectively appears to us as orderly and even simple; how the very weird comes to seem totally normal; how what is unstable feels solid; how objects and topics can come to be referred to, believed in, known, understood, and spoken about in common among us; how certain individuals come to be selected


\textsuperscript{32} Jørgensen and Phillips, \textit{Discourse Analysis}, 103.
and heralded as exemplars and authorities or outcasts and abnormals.” In the previous chapter we have seen how “the best interest of the child” rhetoric is indeed a “powerful shaping force”. In Chapter 3, the examination of more of the discourse around child apprehension and adoption—specifically the terms “apprehension” and “voluntary and involuntary relinquishment”; will demonstrate that this is an issue that is amenable to discourse analysis, and that it is philosophically valuable to subject it to this sort of scrutiny.

The role of binary pairs in discourse

In identifying the underlying structures of discourse, Foucault focused on binary pairs as necessary for understanding the functions of knowledge and power. I will first explain the structure and function of binary pairs in general, and then name three of the binary pairs that exist in all discourse. At several points in this thesis I will be evaluating these pairs as they are found in apprehension and adoption discourse.

Structurally, a binary pair is composed of two elements that are opposed to each other on the basis of a third element. For example, “abnormal” can be defined as the absence or presence of “normal”. Fundamentally, a thing is what it is on the basis of what it is not. Foucault found that not only do these binaries structure discourse; they also determine formal power relationships. In The History of Sexuality he writes:

This form is the law of transgression and punishment, with its interplay of licit and illicit. Whether one attributes to it the form of the prince who formulates rights, of the father who forbids, of the censor who enforces silence, or of the master who states the law, in any case one schematizes power in a juridical form, and one defines its effects as obedience. Confronted by a power that is law, the subject who is constituted as subject - who is "subjected"-is he who obeys. To the formal homogeneity of power in these various instances corresponds the general form of submission in the one who is constrained by it-whether the individual in question is the subject opposite the monarch,

the citizen opposite the state, the child opposite the parent, or the disciple opposite the master. A legislative power on one side, and an obedient subject on the other.  

All binary pairs then, have only two sides - child/parent, disciple/master, legislative power/obedient subject - they are a split relation. Foucault demonstrates that power always exists in the positive half of the binary structure - the rich have power over the poor, the master over the servant, the police over the criminal. “The exercise of power is not simply a relationship between partners, individual or collective; it is a way in which certain actions modify others… Power exists only when it is put into action, even if, of course, it is integrated into a disparate field of possibilities brought to bear upon permanent structures.”

Power is one function of binary pairs that we will examine in apprehension and adoption.

As an illustration, using this discursive methodology, Houle identifies binaries pairs that exist in discourse around abortion. Houle says, “All binary pairs, which are ubiquitous in domains of meaning, make the same statement. They say, “Either x or y is true.” And, “Either x or y is real.” Identifying binary pairs in discourse is not only helpful for determining the foundations of meaning, Houle says, it is also vital to understanding the concepts that are missing: “When you find an unpaired element, you can treat it as an unfinished half of a binary, and leave a placeholder for the item that eventually will be found. An educated guess is that the missing element is the anti-thesis of the one you have in hand.”

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36 Houle, Responsibility, Complexity and Abortion, 37

37 Houle, Responsibility, Complexity and Abortion, 37
1. **Included/ excluded: The exclusion of the leper**

The first of Foucault’s insights that I will later connect to the discourse of child apprehension and adoption is the “exclusion of the leper”; the model of an individual “driven out in order to purify the community”. In the Middle Ages, individuals suffering from leprosy were cast out of the city into a kind of a living death. They had no rights or privileges, their possessions were given away and they had no further contact with the rest of the community. This was a clear expression of the structure of groups. There is an “in” and therefore, there is an “out”- a binary pair. A person is excluded as a necessary result of the fact that she is not included. This was marginalization in its most literal sense. Now, even though the exclusion of “lepers” no longer occurs, Foucault says that this structural principle is still in use, as exclusionary power exercised over “the mad, criminals, deviants, children and the poor… Generally, we describe the effects and mechanisms of the power exercised over these categories as mechanisms and effects of exclusion, disqualification, exile rejection, deprivation, refusal and incomprehension; that is to say, an entire arsenal of negative concepts or mechanisms of exclusion”. Foucault says that this underlying structure is a permanent way to justify and support societal norms. “The norm…lays claim to power. The norm is not simply, and not even, a principle of intelligibility; it is an element on the basis of which a certain exercise of power is founded and legitimized”. Power is not something to know, or figure out- it is rather a function that creates a hierarchy of value.

Houle studies the binary pairs of inclusion and exclusion when considering abortion.

Exclusion in a literal sense is experienced in countries where abortion (and even discussion about

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39 Foucault, *Abnormal*, 44.
40 Foucault, *Abnormal*, 50.
it) is restricted or prohibited. Women who need these services have to do it secretly, at the risk of being excluded from their communities socially or even of being imprisoned. Asuman Lukwago, a top bureaucrat in the health department in Uganda believes in the necessity of safe, legal abortions but would never say so publicly. “People would hate me” he explains.41 Yet even in countries where abortion is legal and accessible, woman often do not talk about their experiences. It is a non-subject. Houle writes, “nevertheless my body, the deaths of what I carried within in, the lives of what I carried within it, the bodies of an estimated one in three women who have abortions each year; the miscarriages, the pill, the choosing not to have children; the way that no one much talks about those experiences; experiences of deaths, infinite and infinitely equal, uncommemorated, uncommemoratable, most common death”.42 When a woman is pregnant, and desires to continue the pregnancy, she is included in the category of expectant mother. When she does not continue the pregnancy, she is excluded- the qualities of “leper” attach to her- neither a mother nor an expectant mother, but occupying an unnamed space instead. This example demonstrates Houle’s point- that a missing half of a binary pair points to a gap in discourse- a space populated by a thing or idea that exists but is not addressed, and is effectively erased from the narrative- while still playing a role in it. We will return to this point in the next chapter when we examine how birth mothers and adoptive mothers can be identified as not-mothers, the missing half of the “mother” binary and how this exclusion is a function of the sovereign power structure that produces moral norms.

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41 Houle, Responsibility, Complexity and Abortion, 10
2. Heard/not heard: the role of expert testimony

As we consider the ways that language is meaning-making, of specific interest to this project is Foucault’s analysis of expert testimony. In his account of the history of criminal law, he says that expert testimony serves to convict people for being a certain kind of person, aside from them actually committing the crime. It suggests moral faults—a condition that is close to being an illness, but is not an illness since it is a moral fault, which implies culpability.\(^{(43)}\) Foucault demonstrates how concepts such as poverty, lack of intelligence, immaturity, instability started to be used by psychiatric experts to describe individuals accused of crimes, in order to demonstrate a “weakness or incapacity of the subject”.\(^{(44)}\) Foucault calls this “doubling”, and it becomes a way of framing a crime so it fits with the person under consideration. The offense “is doubled with a whole series of other things that are not the offense, but a series of forms of conduct, of ways of being… that are the cause, origin, motivation and starting point of the offense”. Individuals are then actually judged for being unsatisfactory people, not necessarily for performing an unsatisfactory act. The sort of person that they are is both the “cause” of the act and the justification for punishment. “As a result, a person never appears in court with just his crime. He arrives with the psychiatric expert’s report and comes before the court burdened with both his crime and this report.”\(^{(45)}\)

What do these expert testimonies reveal? The illness? Not at all. Responsibility? Not at all. Freedom? Not at all. There are always the same images, the same actions, the same attitudes, the same puerile scenes: “He played with wooden weapons.” “He cut the heads off cabbages.” “He was a trial to his parents.” “He played truant from school.” “He didn’t learn his lesson.” “He was lazy.” And then: “I conclude from this that he was responsible.”\(^{(46)}\)

\(^{43}\) Foucault, Abnormal, 19-20.
\(^{44}\) Foucault, Abnormal, 21.
\(^{45}\) Foucault, Abnormal, 40.
\(^{46}\) Foucault, Abnormal, 36.
Because of the stigmatizing language-use, conclusions are drawn about the criminal that have nothing directly to do with the crime. The criminal act is overshadowed by this assessment of character. Character and intentions starts to become central to the “meaning” of acts.

The role of the binary of expert and not-expert is also evident in medicine. Broadly speaking, the binary pair that exists in all medicine is the role of doctor (the expert) and patient (the not-expert). The doctor is the expert; the patient is the one seeking help; the not-expert. Houle recounts her experience of abortion in the 1980’s. In order to qualify for the procedure she needed a report from a doctor and the approval of a committee. The report include characterizations of her such as not being “emotionally or financially equipped” to continue the pregnancy, and having a lack of an “ongoing relationship”. It concluded by noting that “birth control will be prescribed for her”. In this case of “doubling”, the expert testimony, using no medically relevant aspects of the procedure, served to portray the patient as irresponsible and inadequate, and therefore the sort of person who is unsuitable for parenthood, making an abortion a satisfactory option.

In apprehension and adoption discourse, we will be considering the expert/ not-expert binary both in our examination of language in the next chapter and also how it functions in regard to personae- the roles or positions that individuals occupy in discourse - in the third chapter. We will see that the personae and testimony of experts can come from medical doctors, social workers and even the general public, who occupy a position that functions as power over the not-experts- in this case, the birth mothers.

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47 Houle, Responsibility, Complexity and Abortion, 67.
3. Trustworthy/untrustworthy: Danger to society

Foucault demonstrates how exclusion and expert testimony becomes warranted by the concept of social danger. To justify the practice of excluding people with mental illness, for example, these individuals had to be perceived as a threat to the community. Foucault said, “Madness had to be codified at the same time as danger, that is to say, psychiatry had to make madness appear as the bearer as a number of dangers, as the bearer of risks, as a result of this psychiatry, as the knowledge of mental illness, could function as public hygiene.”48 This is a moral project, the reason that binaries must be maintained in society. There is always some sort of threat- subtle or obvious- that made this assessment desirable. Another example is the binary of the criminal (danger), and the police (safe). If the police do not manage the people who are breaking the law, there is a threat to the rest of the community. In this way, the police uphold the law and decide whether people are breaking it, the criminal is subjected to exclusion, and the rest of society agrees to this state of affairs because it seems to keep them safe.

The idea of danger to society can be deployed to produce certain meanings in both sides of abortion discourse. Houle offers several examples of public discourse that point to very different dangers. One is a newspaper feature article that looks at abortion as a potential tool for eugenics. If abortion is freely available, medical technology exists to determine whether a fetus is at risk of a disability or illness, potentially leading to selective abortions. This is a deeply controversial issue, and seems to put society at risk by classifying some kinds of lives as more or less valuable as others.49 Another kind of danger is evident when abortions are not freely available. Houle cites another newspaper article entitled “Unsafe Abortions on the Rise in

48 Foucault, Abnormal, 119.
49 Houle, Responsibility, Complexity and Abortion, 55.
Developing Countries”. The lack of reproductive choices is unquestionably a serious risk to women. Women can die from complications from abortions performed by incorrect methods—another kind of danger. 50

The report of a threat creates urgency in the discourse, and this aids in the maintaining of binary positions—specifically the one who will make the situation safe. As we will see, in the case of apprehension and adoption, the threat/safety binary is evident in both language and personae. For example, birth mothers who fill the personae of “unfit to parent” can be seen to pose a danger to their children, and also to the community that cares about the well-being of children. Social workers are safe, and can exercise state authorized power over these mothers by apprehending their children. In this way the threat is neutralized, and public safety and moral hygiene is upheld.

Chapter 3: Language Use in Apprehension and Adoption

Following the lead of Foucault and Houle, I will now go on to examine several concepts that are commonly seen in the master adoption narrative: “voluntary and involuntary relinquishment” and the concept of “apprehension”. I will look at how these terms are used in other contexts—not in an exhaustive, philosophical way, but in ways that they are commonly understood by the people who use them. This will help identify the way these terms have functioned in adoption discourse in ways that maintain the binaries that we have listed above: who is included and who is not; who is heard and who is not, what is safe and what is dangerous, and how this functions to

50 Houle, Responsibility, Complexity and Abortion, 52.
marginalize individuals and lead to unwarranted conclusions. Through this we can start to see how language-use creates and supports these binaries, rather than being a product or a reflection of them, and how it supports the rhetoric of “the best interest of the child” as both a justification for the accepted adoption narrative and as cover-up of the complexities that are inherent to this narrative. By doing so I hope to open a space for a more inclusive and ethical discourse, one that allows for the complexities that are hidden by the standard rhetoric, and gives us the opportunity to respond to the practice of apprehension and adoption in a different way.

**Involuntary and voluntary relinquishment: “involuntary” and “voluntary” in other contexts**

Branches of value theory in philosophy are still considering the problem of how to distinguish between “voluntary” and “involuntary” acts. This is a vital distinction for ethics, since a person should not be considered blameworthy or praiseworthy for acts that are involuntary. My intent here is not to offer a comprehensive assessment of this complex issue, but to identify how we currently do understand these categories, and how they function in apprehension and adoption discourse.

Understanding of what constitutes a voluntary and involuntary act seems to fall into two groups. One says that voluntary and involuntary acts exist on a continuum- with some acts being more or less voluntarily, ranging from completely of one’s choosing to not at all of one’s choosing. Another says that any act that is not voluntary is involuntary. An example of these two concepts can be found in the social norms that determine whether a person is understood to be voluntarily or involuntarily unemployed, which matters for benefits such as employment insurance. If the CEO of a large company is fired and currently unemployed, and is offered a job serving coffee at Tim Horton’s, she could be seen as being involuntarily unemployed- not
because there were no jobs to be had, but because the Tim Horton’s job would not be seen as an acceptable choice. However, if a person was fired from McDonalds, and then refused the Tim Horton’s job, they would be seen as being voluntarily unemployed. This approach sees voluntariness as a continuum- a matter of degree. It is a contrary view from the understanding that an act is either voluntary or involuntary. That would consider the rejection of any job to be voluntary unemployment, since it does not matter if the available options are not desirable, only that one or more options exist. An example of this sharply differentiated idea of voluntary or involuntary can be seen in medical ethics. In Ontario, adults have the right to voluntarily access health care, or to refuse it. “Voluntary admission” means that a person chooses to go to a hospital or other treatment centre, and can also choose to leave treatment. However, medical care can also be involuntary. In certain circumstances, an individual can be forced by a doctor, judge or police officer to receive treatment at a hospital or other treatment facility. This is a legal process covered by the Mental Health Act, and may occur in situations of mental illness, when a person is deemed to be a risk to self or others and is refusing to seek treatment voluntarily. The circumstances that meet these criteria are narrow- the risk has to be urgent and immediate, forms have to be signed by doctors, and the allowable duration for involuntary treatment in the hospital is short, usually 48 hours. In terms of medical care then, treatment almost always has to be voluntary. Involuntary admission to hospital is something done “for one’s own good”, but has very narrow and specific parameters and it is an extremely temporary arrangement.

For the purposes of this analysis, it seems clear that “voluntary” acts exist on a continuum. Certainly some acts are more or less voluntary. Sometimes we do things that we

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would rather not do, but choose to do as a result of conscience or coercion. For example, perhaps I would rather go on a cruise than pay my rent, but my understanding of the consequences of my first choice makes me pay my rent. If a mugger says, “Your money or your life!” I have a choice, even if the options are both undesirable. However, to describe the act of handing over my wallet as “voluntary” may seem like a stretch; this act would certainly be placed on the “less voluntary” end of the continuum. Yet there has to be a point of no return, when an act can no longer be considered voluntary in any way. An involuntary act, such as being detained to a treatment facility under the Mental Health Act, is completely against one’s will and not of one’s choosing, and in this way does not exist on the same continuum as voluntary acts.

“Relinquishment” in other contexts

“Relinquish” is a verb, used with an object. It means to renounce, give up or surrender possessions or rights. In connection to rights, relinquishment denotes the act of formally and voluntarily letting go of certain privileges. One example of this is the act of relinquishing citizenship rights. In citizenship law there is a way for a person to legally relinquish nationality. This must be done voluntarily, with full understanding of the consequences, and it is a total act—it is not possible to partially relinquish citizenship. The United States Immigration and Nationality act says: “A person who wants to renounce U.S. citizenship cannot decide to retain some of the privileges of citizenship, as this would be logically inconsistent with the concept of renunciation. Thus, such a person can be said to lack a full understanding of renouncing citizenship and/or lack the necessary intent to renounce citizenship, and the Department of State will not approve a loss of citizenship in such instances.”

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recognizes the importance and finality of this act, and intervenes in a way to protect citizens who lack full understanding of the legal consequence. For example, in 2014, over 3000 Americans living abroad relinquished their American citizenship in order to avoid a new tax law that forces financial disclosure for bank accounts in other countries. In any case, relinquishment of citizenship is a free choice-inherently voluntary, initiated by and executed for the benefit of the person doing it.

The concept of relinquishment is also seen in discussions of emotional well-being. Individuals may be urged to relinquish a negative emotion or behaviour in order to improve their lives. In her account of surviving anorexia, Anna Maxted writes, “To relinquish an eating disorder in favour of facing the world raw requires courage - but, I promise, few of life’s burdens weigh as heavy as anorexia”. Clancy Martin, in his book Love and Lies: And Why You Can’t Have One Without the Other borrows a theme from Kierkegaard’s The Seducer’s Diary and says, “I can never be deceived in love because so long as I am loving, that is true for me. It does not mean the person I love will love me in return. But as soon as I choose to love, if I am really loving, I have to relinquish the idea that I must be loved back – even if it’s the love of my parents, or the love of my children”. (Italics mine) Acts of relinquishment, even of intangible or internal states are the result of a conscious choice between options, a self-directed act designed to increase one’s own happiness and emotional well-being.

54 Anna Maxted, “As an anorexic I was trying to rub myself out”, The Telegraph February 25, 2015 http://www.telegraph.co.uk/women/womens-health/11432302/As-an-anorexic-I-was-trying-to-rub-myself-out.html
“Apprehension” in other contexts

In other contexts, the term “apprehension” is used almost exclusively in situations of criminal law. The police “apprehend” people who are caught in the act of committing crimes, or have committed a crime previously. It can also be used in the context of arresting people who are not, but could potentially be, criminals. A recent newspaper article entitled “Canada's new anti-terror legislation prompts civil liberties fears” reads: “Declaring that “a great evil has descended on our world”, [former] Canadian Prime Minister Stephen Harper has unveiled legislation giving security forces sweeping new powers to apprehend suspected terrorists and disrupt their activities”. It is important to note that apprehension is authorized by the state, but only when there is reasonable certainty that an individual has committed a crime. Other circumstances, such as arresting people who may potentially commit a crime in the future lead to concerns about violations of civil rights.

“Voluntary and involuntary relinquishment” in apprehension and adoption: A contrast

We have seen that in the other contexts, common understanding suggests that “voluntary” acts involve choice. Actions exist on a continuum, and may be more or less voluntary. Relinquishment is inherently voluntary. An “involuntary act” is completely against one’s will and not of one’s choosing. Looking now at how terms “voluntary relinquishment” and “involuntary relinquishment” are used in apprehension and adoption discourse will help us to understand why we might accept the master narrative without question.

“Involuntary relinquishment” is a term used in adoption discourse that refers to situations in which a birth mother refuses to “voluntarily” give up her child for adoption. Instead, she loses

custody of her child though legal processes - a court decision called a “termination of parental rights”. This permanent severing of the relationship between mother and child is likened to the “death penalty” for parents because of its finality. Voluntary relinquishment is any kind of loss of custody that occurs without this legal termination order. It can appear that child relinquishment is always voluntary, up until the courts intervene, but this would be an over-simplification. This is demonstrated in many first hand narratives that this is not necessarily the case, including this account from a social worker about an infant relinquishment: “Recently I visited a detention infirmary that housed a young girl who had just given birth. She was spiking a fever, possibly the result of a post-delivery infection. I wasn’t allowed to see her, but I heard that her infant, whom she’d been forced to relinquish at birth, was waiting alone in a hospital nursery for a family member or a social services representative to come pick him up.” This situation would officially be called “voluntary relinquishment”.

Other academic studies have looked more closely at the emotional experience of relinquishment. Michael De Simone studied the nature of grief of women who “voluntarily” relinquished their children for adoption. He found that of the 264 birth mothers who participated in the study, in response to the question which measured the degree to which the adoption was based on the birth mother’s decision, 46.1% responded that it was “not at all as I wanted.” Many of these women stated that coercion by others strongly influenced their decision to relinquish their children. When “voluntary relinquishment” is described by the mother as “not at all as I wanted”, or when we hear of women who are “forced to relinquish”, it seems that the

loss of the child in this way cannot be named as “voluntary”, nor as “relinquishment” as it was in any of other contexts we looked at.

Personal accounts from women who have actually relinquished their children for adoption are another rich source of information and insight. In the 1950’s and 60’s, young, white, unmarried women in North America were encouraged to sign away custody of their babies – to “voluntarily relinquish”- so that they could be adopted by more “suitable” families. Ann Fessler is a well-known advocate for birth mothers. She collected many of these personal accounts into a book called *The Girls Who Went Away*. It becomes evident through the stories that these relinquishments were at least sometimes “involuntary”, meaning that there were no other options. “After the birth, when the reality of motherhood had sunk in, many of these women were desperate to formulate a plan other than relinquishment. But there was no system of advocacy for a woman who knew she wanted to mother from the beginning, nor any effective recourse for those who came to that realization after their babies were born. Many women were presented with papers in the hospital when they were still recovering from childbirth and were authoritatively instructed to sign. Some did not even understand what they were signing.”

Yet, there was a pretence that this act of relinquishment was completely voluntary. One birth mother talked about the legalities of relinquishment:

One of the questions that came up when you go to court and relinquish is they ask you if you have been coerced in any way, and I thought it was the height of hypocrisy. Of course you are coerced. You are coerced by your parents, who said. “Don’t come home again if you plan to keep that child. We are not going to help you”. You’re coerced by everyone around you because of the shame and lack of acceptance by society and your community. You are not acknowledged as a fit mother because you had sex before you were married. The judge congratulated me on how courageous I was. I was furious that he would tell me it was about courage. It was about defeat. It was totally about shame and defeat.

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61 Fessler, 188.
In contrast to the 50’s and 60’s, Children’s Aid Societies, with the authority of the courts, now apprehend children that are deemed to be “at risk”. If the birth mothers are unable to meet the requirements of CAS it can be determined that the child will not be returned to their care. In this case, the mothers are then “encouraged” to either “voluntarily relinquish”, or have their parental rights terminated by the court- an “involuntary relinquishment”. Karen Broadhurst and Claire Mason summarize the tension and incoherence in the discourse around the concept of relinquishment in their paper entitled “Maternal Outcasts”. “The concept of ‘voluntary and involuntary relinquishment’ is very difficult to define, indeed given the complexity of the issue there can be no easy distinction between the two. What is clear is that many mothers are left feeling that their children have been ‘taken away’ whether or not they have ‘agreed’ to the voluntary accommodation of their children in the first instance”. The issue of coercion and force that seems to be inherent to even “voluntary” relinquishments, the lack of available options, and the power differential between birth mothers and CAS/ courts makes the language of voluntary and involuntary relinquishment virtually meaningless.

“Apprehension” in adoption discourse: Another contrast

In the adoption narrative, the term “apprehension” refers to the act of a child protection worker removing a child from a parent due to concerns about the child’s safety. According to the Ontario Child Protection Tools Manual, child apprehension is the last resort; after all other forms of intervention are exhausted: “Should the severity and imminence of the threat of harm to the child be high, and should no safety intervention be available to sufficiently mitigate the

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conditions, apprehension and placement in CAS is the final safety intervention available”. The Child and Family Services Act concurs. Under the heading of “Warrant to apprehend child” it says, “A justice of the peace may issue a warrant authorizing a child protection worker to bring a child to a place of safety if the justice of the peace is satisfied on the basis of a child protection worker’s sworn information that there are reasonable and probable grounds to believe that, (a) the child is in need of protection; and (b) a less restrictive course of action is not available or will not protect the child adequately”.

These policy statements allow us to believe that child apprehension only occurs rarely, as the very last resort, in situations where the child is in significant danger. But in reality, this is not always the case. In a research report entitled “A Visceral Grief: Young homeless mothers and loss of child custody”, the researchers noted that child apprehension occurs for other reasons as well:

The usual length of stay in hospital for a vaginal birth is two days, which is not long enough for the child protection agency to make a thorough assessment of an unknown mother’s parenting prospects and her available supports. As a result, a newborn might be apprehended unless the mother can demonstrate that she has a strong network of supports in place and a supervised environment to return to with her baby. Risk of apprehension increases further when a baby is born late in the evening or on a weekend or holiday, when the hospital social worker is not available to set up supports. Even when the worker is available, there are usually waiting lists or time-consuming procedures for admission to residential programs that offer safe environments for a woman and her baby while child protection conducts a more thorough investigation. If these exceed the length of stay at the hospital, the child may be apprehended as a precaution.

Further to these administrative issues, a family law website offers these further reasons that may result in child apprehension: “The CAS can take your child at birth if there are significant concerns for your child’s safety. Just like at any other time, the CAS must have clear concerns to

63 http://www.children.gov.on.ca/htdocs/English/topics/childrensaid/childprotectionmanual.aspx
take this action. For example, the CAS will likely be concerned for your child’s safety if: your previous children have been taken by the CAS; you have a serious drug and alcohol problem; you are homeless or living in an unsafe environment; or you are a teen mom, especially if you were ever in the care of the CAS.”

The function of language-use in adoption discourse

Having examined some of the words and phrases that exist in adoption- specifically “voluntary and involuntary relinquishment”, and “apprehension”, and comparing their role in other contexts, we can begin to see how these words function on many registers in the adoption narrative. The first thing that this language does is allow us to think things about apprehension and adoption that are not true. When it is said that a woman “voluntarily relinquishes” her child for adoption we imagine, thanks to meaning borrowed from other contexts, that her act is freely undertaken, that it is one of a number of options, that she is not subject to force or coercion, and that she has full understanding of her actions. Also, as we have seen, in any other context, “relinquishment” is typically be voluntary; therefore adding the qualifiers of voluntary or involuntary is nonsensical. Relinquishment is voluntary, self-directed and done with full understanding. Without these aspects, it is not “relinquishment”, but it is something else entirely.

This incongruity of language and practice continues with the term “apprehension”, used by CAS to refer to removing a child from a home, or “apprehending at birth” from a hospital when they are deemed to be at risk. Since apprehension is used almost exclusively in the context of catching criminals in order to increase the safety of society, it is difficult to understand why

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this term is also used in the context of taking at-risk children from families. One aspect of apprehension is that it is an undertaking that has the authority of the state, both in criminal law and child protection. In this way, the apprehension of a child can be seen as an official, necessary act that carries the force of law and promotes the well-being of society as well as the best interest of the child.

Using the language of relinquishment and voluntariness, combined with the unscrutinised justification of the “best interest of the child”, allows society to passively and actively participate in the removal of children from birth mothers without guilt, without having to authentically face the devastation of this act. It lets us believe that children are being protected by “the system” after apprehension, and that they go from safe foster homes to loving adoptive homes. It allows adoptive parents to receive their new child joyfully- as I did- with the confidence that the child has been freely given up, and even rescued from something “risky”.

The next chapter will move on from language-use to explore the personae of mother both in the adoption narrative, and in other contexts. This aspect of discourse analysis will consider social norms and practices around pregnancy and motherhood. By identifying the three binaries of included and excluded, heard and not heard, safety and threat found in this part of the discourse we will begin to identify the ways that normative adoption rhetoric can function to oversimplify the experiences and discount the role of the birth mother- ultimately erasing her from the narrative.

**Chapter 4: Personae in Discourse of Apprehension and Adoption**

The previous analysis has made it clear that the language- use around adoption is meaning-making, and that specific concepts which are commonly used to solidify conclusions
that do not necessarily reflect reality. In short, we can see that language functions to create truth, which makes societal structures and roles that need to be filled to confirm that expectation of truth. It is important to remember that language and personae are not clearly divided— they work together to create a narrative. The focus of this chapter will be to identify the personae, and the social norms that support the language and practice of apprehension and adoption. To do this work, we will return to Foucault’s concept of “doubling”, of using language to characterize individuals in a certain way, independently of their actions, which is one of the functions of expert testimony. Foucault used the example of the personae of “criminal” and the role of expert psychiatric testimony. I hope to demonstrate that this analysis can also be applied to the personae of “unfit mothers”— those deemed unable to parent adequately— and the role of expert testimony from social workers, medical professionals, and child protection workers.

In the 1950’s and 60’s in North America, it was common practice to force young, unmarried mothers to give up their babies for adoption by a more suitable family. In psychiatric social work, the young unwed mother was described as “neurotic and therefore unfit as a parent… the experts maintained that illegitimacy had little to do with sex and much to do with psychological sickness”.

Early psycho-dynamic models showed the unwed mother as “using her pregnancy to regressively act out unconscious unmet needs towards her own mother”. In more recent studies, the language of “unfitness” is similar: mothers are young, from a low socio-economic background, have poor relationships. Though the reality of each situation may vary, the descriptors are repeated by experts— social workers, psychiatrists, academics and doctors— in similar ways throughout the literature: the “unfit” mother is poor, uneducated, immature, and

emotionally unstable. This characterization is a Foucauldian “doubling”: it exists and influences understanding even before the issue of parenting comes into play and this functions to maintain binaries. These women are the “sorts of people” who are unfit to be mothers. They are a danger to their children and, by extension, the rest of society. When the language and underlying characterizations are accepted without reflection the overall result is a tacit justification of the exclusion and silencing of the mothers who lose custody of their children. It allows us to believe certain things about these mothers- about the kind of people that they are- in order to accept the master adoption narrative. In my own case, I knew that the birth mothers of my children suffered poverty and addiction, and I did not believe that I needed to know anything more in order to judge them unfit. As we will see, the acceptance of these characterizations allow the state to act in a way that supports the norms of certain kinds of families, while marginalizing others.

In this chapter we will also look more closely at Foucault’s conception of power. As we have noted previously, a Foucauldian view says that sovereign power is always exercised in the positive half of the binary- the included get to define the rules and experiences for the excluded. This is not necessarily intentional, but an inevitable function of power. The “experts” get to name things and make categories that the “unheard” are labeled by. The idea of social danger serves to promote the interests of the included and heard. In the words of Carlos Prado, “What is of greatest importance here regarding Foucaulian power is the connection between power and truth. Power, in shaping subjects determines what they come to hold true, and power, in the imposition of discipline and practices, produces truth. This … power determines discursive currency”. 69 We have seen that language–use in discourse creates meaning. It follows that when there are ideas and experiences that are unsayable- that are excluded and unheard - there are gaps

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in the discourse. This is what leads to exclusion from common narratives, as in the case of apprehension and adoption. In order to demonstrate how roles and power work in the adoption narrative we will consider the social meaning of the “personae”, by looking at some of the varied experiences of pregnancy and motherhood. We will look at pregnancy and biological motherhood, and then “not-motherhood”- a related category which includes both the adoptive mothers and mothers who have lost custody of their children.

**Missing persons: The erasure of the birth mother in adoption narrative**

**The subjective experience of pregnancy**

Pregnancy is a state of being that is rife with social meaning, both for the expecting mother (the internal experience) and the community around her (the external experience). Again in this analysis we will focus in a general way on Western experience. First we will consider the internal meaning of a woman’s pregnancy as embodiment, as something that happens to her- as a physical changing that is beyond her control, as something that happens within her- as a developing being that is wholly Other, and as a redefining of a woman to her self- that she is fundamentally changed as a result of a pregnancy. This internal meaning of pregnancy includes all pregnant women- those who choose to mother the child following the birth, those who choose to give the child for adoption, those whose have stillborn babies, and the women who we are considering- the mothers who have their babies apprehended.

Hilde Lindemann Nelson, in her article “The Architect and the Bee” rejects the idea that pregnancy is simply a passive biological function “involving a complex interplay of the woman’s bodily mechanisms but requiring nothing further of her except that she not interfere
with them”.

Instead, she says, the state of being pregnant is a creative and purposeful activity. Firstly, she says, women (unlike animals) generally get pregnant for a reason. “They may conceive and carry a fetus because they want a special relationship that will last over time, or because they want an existing child to have a sibling, or because without children they would feel less firmly rooted in the world, or because they hope the baby’s bone marrow will be a lifesaving match for a dying family member.” In the case of an unplanned pregnancy this purposiveness is less evident— it is not the case that all women who get pregnant do so “for a reason”. Yet, women who then choose to continue a pregnancy (rather than abort) certainly have a purpose, or a sense of purpose. They have the intention of bringing a baby into the world.

Their reasons may be different than the examples that Nelson names. They may decide to continue a pregnancy because an abortion is not available or desired. They may have the intention of providing a baby to another person in the case of a planned adoption, or to replace a child previously apprehended. Yet whatever the reasons may be, pregnancy can be said to have the character of a project, undertaken by a woman for a reason and with a purpose.

Notice that Nelson also describes pregnancy as being “creative”. “It begins as an act of the woman’s imagination, as soon as she knows or suspects she is pregnant. At that point she may be at odds with her own body, or she may be in a special harmony with it, as the newly formed fetus both is and is not a part of her own self.” Regardless of the circumstances, a pregnant woman creates a relationship with a developing fetus that is meaningful and singular.

Iris Marion Young, in her much cited work on pregnancy and embodiment, “Pregnant Embodiment: Subjectivity and Alienation” describes this unique experience of being: “The first

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movements of the foetus produce this sense of the splitting subject; the foetus' movements are wholly mine, completely within me, conditioning my experience and space. Only I have access to these movements from their origin, as it were. For months only I can witness this life within me… I have a privileged relation to this other life.”

Clearly a pregnancy, whatever the outcome, can be understood as an important, non-trivial, life-altering, active event for all women. Yet as a pregnant woman experiences physical bodily change, the internal experience of pregnancy is also subjected to public gaze. The pregnancy is no longer the sole dominion of the woman, but begins to be a part of a larger social context, and is subjected to those forces of meaning-making as well.

The objective experience of pregnancy

In pregnancy, at least in the generality of Western experience, women are desexualized, changing the experience of female embodiment in public places. Iris Marion Young reflects on this:

The culture's separation of pregnancy and sexuality can liberate her from the sexually objectifying gaze which alienates and instrumentalizes her when in her non-pregnant state. The leer of sexual objectification regards the woman in pieces, as the possible object of a man's desire and touch. In pregnancy the woman may experience some release from this alienating gaze. The look focusing on her belly is not one of desire, but of recognition. Some may be repelled by her, find her body ridiculous, but the look that follows her in pregnancy does not alienate her, does not instrumentalize her with respect to another's desire. Indeed, in this society which still often narrows women's possibilities to motherhood, the pregnant woman often finds herself looked at with approval.

It must be noted however the public approval of the pregnant state is often limited to women who fit a certain recognizable profile- neither too young nor too old, not already having “too

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74 Young, “Pregnant Embodiment”, 53.
many” children, an appearance of having a reasonably high socio-economic status, and an absence of visible addictions. This creates a visible, Foucauldian binary pair- a division of pregnant women into categories of ideal and “good” mothers- to -be, and inadequate, “bad” mothers-to-be. For example, only a few decades ago, pregnant women who smoked cigarettes were unremarkable. Now, pregnant women who smoke are subject to public censure, and seen to be “bad” mothers –to –be, selfish and uncaring. The characteristics of women who fit the binary roles of good or bad (pregnant) mother shifts over time, but the binary itself always exists. Given the problems of addiction, mental health and poverty that we have named earlier, women whose pregnancies end in apprehension are generally seen as “bad” mothers-to-be, and we will now flesh that out to see the implications of this characterization.

Beyond the binary of good (included) and bad (excluded) mother to-be, there are several more facets of the public experience of pregnancy. There seems to be an increasing public stake in a pregnancy in terms of law and medicine. The justification for the public stake in a pregnancy is generally described as a financial interest. Children who have disabilities resulting from a mother’s actions during pregnancy can be expensive. This potential expense is seen as a “risk” to the public, and again demonstrates the safety and threat binary- “safe” mothers-to-be are those who do not place their unborn children (or taxpayers) at risk through their actions. Alcohol use during pregnancy for example, may result in the child having Fetal Alcohol Spectrum Disorder (FASD). “A recent study by the Government of Canada (2007d) showed that the cost for families with a FASD-affected child for medical and other treatments was approximately $24,000 a year. According to Than and Jonsson (2009), the total annual costs for all Canadian FASD-affected individuals between the ages of zero and 21 years can potentially
reach $571 million.” Since this kind of cost is borne at least partly by taxpayers, the public interest here seems warranted. What is less clear is the extent to which the public interest can interfere with the actions and choices of a pregnant woman. My point is that even if the boundaries of public interest are nebulous, a pregnant woman is more and more seen to have some degree of responsibility not only to her fetus, but to the general public. This puts her behaviour under scrutiny and adds a new requirement to be included in the category of “good mother”.

There is a standard by which pregnant women are judged—“good”, meaning selfless and willing to focus her attention on having a healthy baby instead of her own personal desires, cooperative with the intrusion of others on her personal space and conduct, as opposed to “bad” pregnant women— who are selfish and uncaring about the risk they present both to the fetus and the general public— such as those who sniff glue or refuse medical treatment. Again, it is not my intent to deny the truths evident in these judgements— clearly having a healthy pregnancy is very important— but to examine the way that social expectations of pregnant women function in discourse to create and reinforce the binaries of included and excluded.

The role of expert testimony in pregnancy

Foucault’s concept of the function of expert testimony accounts for the way that characteristics can be attached to an individual which overshadow any act of wrong-doing. Returning to the example of the pregnant woman who smokes, the assessment that she is selfish and uncaring is a characterization that eclipses the act of smoking in itself. The binary of good

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and bad mother-to-be is supported by a great deal of expert testimony: a barrage of “advice” to pregnant women that seems virtually limitless—from medical health professionals, to parenting magazines and books, to websites and social media, and even from self-proclaimed experts on the street. Not all of this information carries the same weight, but certainly there is an expectation that good mothers accept the advice of medical health experts. Caroline Gatrell, in her book *Embodying Women’s Work* observed that during pregnancy women are expected to measure themselves in relation to complex and demanding standards. They are expected to consult with their doctors about exercise, activities, diet, travel and a host of other concerns that would not be an issue if not for the pregnancy. Gatrell observes, “Pregnant women are expected to attend regular antenatal appointments for screening and general health checks, during which advice on diet and lifestyle will be offered, questions will be asked relating to the consumption of cigarettes and alcohol, and maternal weight will be measured.”

Gatrell considers the result of this binary of health and not-health in terms of the actual work that pregnancy involves. “[Pregnant women] are expected to attain (and are measured against standards and targets which they cannot hope to achieve unless they successfully fulfil criteria related to health appointments, screening, diet and lifestyle. Thus, “choices” about what to eat and drink, and how best to cope with the work involved in managing pregnancy, are rarely left to the discretion of the pregnant woman herself and are in practice limited and limiting”. Women who fail to meet these standards are judged to have performed this work inadequately. In this way, expert testimony—primarily from doctors—and “common sense”—beliefs internalized by the community—creates a narrative where “good” mothers comply with medical involvement and advice, and “bad” mothers do not. What is at issue here is not the question of whether or not public scrutiny is an

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appropriate part of the external experience of pregnancy, but the fact that this kind of scrutiny does happen, and many people think that it should - that “policing” is a reasonable and necessary function of society, and that pregnant women ought to submit to it. A pregnancy is not simply an autonomous, individual experience, accessible only to the mother. The external experience, with all the contingent ambiguities and judgements, is unavoidable.

The external experience of pregnancy may also include special social occasions. While the “bad” mothers may face public censure and disapproval, the “good” mothers are often celebrated. A woman may announce their pregnancy to family and friends, receiving congratulations and shared joy. Baby showers are usually held for the expecting mother: “One central purpose which the traditional baby shower serves, then, is to equip the new mother with the clothes, toys, and furnishings she is going to need for the new baby. The gifts serve an economic purpose but at the same time serve to reinforce the new mother's dependence on a community of other women. And this dependence is not only based on financial and even emotional support, but also on the "insider knowledge" which is communicated as each gift is opened.” The “good” mothers are included- welcomed into a community that is greater than them, while the “bad” mothers are excluded. When pregnancy is followed by childbirth, women are already carrying the influences and judgments, of both internal and external forces, into motherhood.

This section has identified some of the elements of the social construction of the binary of “good” mothers and “bad” mothers. We can see that birth mothers whose children are apprehended, though they have the same sort of internal experience of pregnancy as other mothers, are publicly deemed to fit into the role of “bad” mother-to-be. This binary of “good”

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and “bad” functions in a way that creates categories of included and excluded, which has major implications for social support and acceptance, both during the pregnancy and after the baby is born. The “bad” mother-to-be may have a successful pregnancy (by producing a healthy baby) but she is still characterized as a “bad” mother- selfish, careless and egocentric, which may or may not be an accurate assessment. But, both “good” and “bad” mothers are included in the category of mother. “Mother” then, is one half of a binary, but the other half is not immediately evident.

As we noted in Chapter 1, a binary with a missing element needs careful attention, because it marks a place in discourse where a thing exists, but is not clearly defined. Houle says, “When you find an unpaired element, you can treat it as an unfinished half of a binary, and leave a placeholder for the item that eventually will be found. An educated guess is that the missing element is the anti-thesis of the one you have in hand.” 79 We will now look at the construct of motherhood from a different angle and evaluate how some women who are pregnant and have babies do not fit comfortably into the category of mother- either “good” or “bad”, and women who mother babies without having given birth to them do not fit well either: they are the ones in that empty space, and as we will see, this creates for them an unworkable paradoxical situation, characterized by a lack of ability to change or influence their position.

“Mothers” and “not-mothers”

Nicole Pietsch in her work on adoption, privilege and race entitled “Good Mothers, Bad Mothers, Not-Mothers” looks at how some women defy the two categories of “good mother” and “bad mother”. She introduces a new term for the other half of the binary of “mother”: the “not-

79 Houle, Responsibility, Complexity and Abortion, 37
mother”. Pietsch’s work is primarily concerned with the racial and gender implications of this binary (for example, the practice in the American South of African-American “mammies” mothering white children) but this is a useful binary to consider for mothers that are involved in adoption as well. Birth mothers who lose custody of their children fit her description of not-mothers well: not a good mother, or a bad mother but something other. Interestingly, adoptive mothers can also fit the category of not-mothers, since they failed to produce a child in a usual way, and were not party to the public field of approval at all.

**Birth mother as “not-mother”**

Rather than being a mother (good or bad), the birthmother can be considered as a “transitional” object. In other words, the value of her experience lies not in the fact that she is has given birth to the child, but instead as a temporary place-holder. Her socially mandated role is to pass the baby on to more suitable parents; “she gives birth, and then physically moves on without the child”. Pietsch sees this construct as analogous to the historic role of the black mammy. These women had the responsibility of nurturing White children and were often depicted as doing so at the expense of caring for their own children. Although the mammy’s role is important and necessary, her rank is subordinate- she is, in the end, a mere servant. Her value is instrumental, rather than intrinsic. Pietsch argues that this role served to affirm racial inequality, and to make it invisible. The image of the faithful mammy made the slave status appear benign. A birthmother who loses custody of a child occupies a similar position. She too is positioned on the outside of the role of mother, and so is socially deemed a “not-mother”. She

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81 Pietsch, “Good Mothers, Bad Mothers, Not- Mothers”, 36.
has to vacate a certain position - that of “mother”. Pietsch concludes, “Like the White birth mother, the mammy is constructed as understanding her place within socio-political hierarchy of race, accepting this place, and then enacting it without power”. The master adoption narrative - that the child is freely given to another - makes it seem that the birth mother is also accepting of this situation.

Since birth mothers are not- mothers, it follows that the pregnancy and birth that resulted in the child are non-events. Although the internal experience of becoming a mother, described in the last section, would have been the same for these birthmothers as for other women, in terms of being creative and purposive, these women did not have the social support that allowed them to take ownership of the experience. They had the inner experience of the pregnancy and birth, but not the external experience - being publicly identified as a mother. Their inner experience was not openly acknowledged in a way that other kinds of mothers enjoy. The coherence within the inner and external experience is fractured. This reveals one of the gaps in the traditional adoption narrative - the experience of the birth mother is effectively erased.

Karen March examines the implications of this erasure of birth mothers from the adoption narrative in her article “Denial of Self”. She describes possession of self as how individuals “think of the self, view the self, and act toward the self as a separate object with particular social characteristics, behavioural traits and peculiarities of action”. In general, individuals can choose to reconstruct their social identity, based on their perception of how others respond, or in light of changing circumstances. March’s point is that for all women who have given birth, motherhood is a vital part of self-identity. For birthmothers then, the negation

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82 Pietsch “Good Mothers, Bad Mothers, Not- Mothers”, 38  
of their identity as mothers can be devastating. Women may feel as though they are living a lie. One woman described her feelings after her child was taken for adoption: “It’s like having a part of you cut off, not feeling completely whole. There was this hole there that, even when I had my other children, that hole stayed. Even when people ask you how many children you have. You can’t tell them the truth. Do I say three children? Because I had three but I didn’t.” These women are unable to have an authentic, coherent experience of self. The fractured experience of being “not-mother” affects identity in a fundamental way. This is a valuable point, which makes it clear that when children are removed from a birthmother’s care, it is not simply a broken relationship, or a terrible experience, but a permanent devastation of self.

**Adoptive mother as “not-mother”**

Adoptive mothers can also be seen as “not-mothers” and have similarly fractured experiences. Without having experienced pregnancy and birth, adoptive mothers are also positioned outside the personae of “mother”. Their experience is analogous to the birthmother in that the fracture occurs at the same place- the space between pregnancy and becoming a mother. Adoptive mothers take on the role of mother as the result of a legal process, and as an emotional and practical one. As a concrete event, pregnancy gives an opportunity for friends and family to prepare for the new person- to feel as though they are part of the process. “Even in today’s transient society where women are less likely than in times past to live near their mothers, aunts and sisters- a kinship system that has traditionally nurtured a pregnant family member and taught her, informally, what she needs to know to get ready to welcome a new baby- today’s pregnant

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parents to be have many opportunities to prepare themselves for birth and for parenting."\textsuperscript{85} Becoming a mother through adoption is to be disconnected from this experience of belonging.

**The function of the mother/ not-mother binary: unworkable paradox**

We have now considered two central binaries evident in motherhood. The category of mothers can be divided into good mothers and bad mothers, and we have moved beyond that to the binary of mothers and not-mothers. These binaries are not abstract- they function in a concrete way to build social structures that create experience. By identifying the previously missing element- that of not-mother, we can see more clearly how this binary functions in practice, by creating an incoherent experience that does not reflect lived reality, and is essentially erased from normative adoption narrative.

A feature that marks the experience of birth mothers who “relinquish” their children is that of paradox. A birth mother faces an impossible situation. On one hand she a “fallen” woman. She is inadequate- both as a mother and as a human being. She allegedly does not have the capacity, either materially or emotionally to raise a child. This is the assessment that justifies the removal of her child- whether forcible, coerced or willing. Yet, she is also seen as noble and selfless. She is said to be sacrificing her own needs in order to increase the chances of a successful life for her child. She puts the child before herself, in a way that mothers are expected to do. So, she is both not meeting, and surpassing moral expectations of motherhood.

Another paradox is the demand that birth mothers both deeply love, and be indifferent to their children. They must love them enough to give them up for the opportunity for a better life, and also be emotionally detached enough to move on with their own lives as though nothing had

happened. “We were told,” says one birthmother, “that by giving up our children, we were doing the noble thing. After we gave them up though, instead of being rewarded or even supported for our ‘nobility’ we were shunned by anyone who knew about our ‘noble’ act.”\textsuperscript{86} The birth mother’s “noble” act is intended to benefit the adoptive parent as well as the child- giving the child as a gift and providing them with the chance to be parents. Again, the role of the birthmother is viewed in light of how it benefits others, not how it benefits herself- again, her value is instrumental rather than intrinsic.

Paradox also marks the experience of some adoptive mothers, particularly in the case of infertility. These mothers have been unable to produce a child in a usual way. This can be a source of disappointment and pain due to “loss of hope for a biological child, a genetic legacy, the experience of pregnancy and childbirth”. She may feel “defeated and powerless as a result of her struggle with infertility”.\textsuperscript{87} She is inadequate for not producing a child in the “normal” way- via pregnancy and birth. But, she is seen as a superior mother for agreeing to parent a child who is “unwanted”. The adopted child is hers and not hers, her heart’s desire, and her second choice.

**Maintaining the binary: the faces of exclusion.**

Now that we have identified the missing binary element of mother- that of not- mother, and how this plays out in the adoption narrative, we will briefly turn to one of the ways that this binary is maintained and reinforced. We have seen that discourse creates meaning. It follows, that when there are things that are unsayable, that are excluded from the narrative, the result is gaps, or silences in the discourse. This silencing is what leads to fractured experiences and

\textsuperscript{86} Merry Bloch Jones, *Birthmothers: Women who have Relinquished Babies for Adoption tell their Stories*, (Chicago: Chicago Review Press, 1993). 73.

\textsuperscript{87} Theresa Kennedy Porch(), 298.
exclusion from the common experience. In order to function effectively, the binary roles must be all present, but also be justified, so that society can see the normative categories as right and good for society as a whole. Foucault identified the purposes of exclusion in several different contexts. One was the exclusion of the leper- when lepers were removed from the community to maintain the health of the other inhabitants. Another example can be found in the identities and trends in historical practices of criminal justice. In *Discipline and Punish*, Foucault examines the role of the criminal, who had to be punished to ensure the safety of the community: “The criminal came to stand for a social malady that signified a broader threat to society than the criminal act itself. Such a disease might spread”. 88 The threat that a not-mother poses to society is more indirect than crimes or illnesses that are easily recognized as potential danger, but exists as a risk to often unspoken moral ideologies, and hence also ultimately a working component in an intact, if less overt, moral system.

In the 50’s and 60’s, young pregnant women who had violated social norms of morality were immediately removed from school. “Given the social stigma of unwed pregnancy at that time, members of the community who wanted to be perceived as maintaining a higher moral standard had to refrain from associating with a pregnant girl. Accepting her condition, or helping her keep the child might be perceived as condoning her actions.” 89 The exclusion of these women who presented a threat to public morality is accomplished by social shunning. These women were ostracized and silenced, and denied their identity as mothers. They were seen as being blameworthy for having sex outside of marriage, irresponsible, and thoughtless. Added to the shame was the fact that she had not married the birth father. “For single girls who became

pregnant during these decades, the most common solution was a hasty trip to the altar and the claim that the baby’s birth was premature. One reason that the high number of pregnancies weren’t socially acknowledged was that so many premarital conceptions were effectively covered up though marriage.” 90

In Western society now, being an unwed mother is generally less morally tainted than it was even a few decades ago. Now, the physical and emotional well-being of children is the motivation for the apprehension of children. The threat to society then is not just the physical danger to children who are improperly cared for, but the threat of upsetting the societal conviction that the best interests of children are paramount. When birth mothers are deemed “unfit”, it is not because they are young and single, but because they live in poverty, or have addictions, or have other conditions that potentially put the safety of the child at risk. Just as the young unmarried women in decades past, these birth mothers are stigmatized and seen as blameworthy. Her pregnancy was careless; she has not taken proper precautions such as using birth control, or failing that, not getting an abortion. After the birth of the baby she is blameworthy for having chosen a bad lover to father a child, or for not getting off drugs, or for not finding adequate housing. She is irresponsible; she does not think things through. Her situation is shameful and it is her fault. So, although these are not the same women who lost their children in the past, the result is the same. These women, though their own actions and choices, are seen to have forfeited their role of mother- making them not-mothers. Interestingly, the idea of a threat to public morality is rarely verbalized. It exists in the background. Instead, the justification for exclusion is turned around, to make the exclusion the active choice of the woman, or at least a reasonable, foreseeable consequence of her choices.

The exclusion of these not-mothers takes a terrible toll. An organization in Australia called Association Representing Mothers Separated from their Children by Adoption (ARMS) worked with birth mothers in coping with their loss. They found that the silencing that occurs in loss of custody cases resulted in a disenfranchised grief. “Because they received no social support in their grieving, mothers attending for support at ARMS feel that they had been unable to explore and express their feelings fully at the time that the adoption occurred. In contrast to a loss through death, where the community would congregate around the grievers and accompany them through the appropriate socially expected behaviours, there are no accepted rituals to promote productive grieving after an adoption”. 91 Because it is disenfranchised, the grief of these mothers is often suppressed- many mothers felt that they were not entitled to grieve the loss of their children, and were even expected to see the loss as a positive event- not really a loss at all. These mothers often did not have people in their lives that were able to support them, such as family, friends or community. This is an important thing to note, since this made them more at risk of being coerced, having their will overridden by the system, or having an inadequate awareness of their rights. The end result was silencing, and exclusion from the society of mothers. The devastation in the lives of birth mothers as a result of loss of child custody is documented in other research studies as well. One study of young homeless mothers noted, “Women who had been drug users before becoming pregnant sometimes sought refuge in drugs after having a child removed from their care. From their perspective, they had not only lost a child, but the opportunity to take on a positive social role. Another common maladaptive response is rapid subsequent pregnancy in an effort to replace the lost baby”. 92 In this way, the loss is multiplied, and should not be seen as an isolated or strictly private event.

92 Novac et al, “A Visceral Grief” Chapter 4.1.
It is important to note that adoptive mothers in no way suffer the same loss as birth mothers do. Yet, in the same way as for birthmothers, silencing occurs by disregarding some of the fractured experience of adoptive motherhood. There is a strong underlying moral ideology that at least partly, the bodily purpose of women is to reproduce. If she is unwilling or unable to become a mother by biological means, she is also a threat to the norm. Infertility is seen as a tragedy and reluctance to produce children is a result of selfishness. Adoption is a way that women can make up for these failings, and at least superficially they are given a kind of honourary pass into the category of “mother”.

When these difficult parts of experience are vocalized- the un-sayable is said in a way that challenges the dominant narrative and violates social norm. This is a phenomenon that occurs in other contexts as well as motherhood. For example, cancer survivors are encouraged to tell the story of their “battle” against cancer, from which they emerged alive and victorious. Less acceptable are words of anger and despair. After treatment for breast cancer ended, my friend wrote, “After the initial relief of treatment ending, I looked around at our life and had a hard time seeing anything other than wreckage. There is a lot of debris laying around- piles in corners, bills forgotten in the chaos, fears that have mounted and turned to nightmares, wounds that need healing, scars that will never go away…. Recently, I have felt so sick of my own grief that I have been running from it. I've pushed people away. Hidden from my friends. Avoided social media and being in public. I haven't wanted to talk about cancer or treatment or the future. Face the concerned looks of those who love me. See the longing in my children's eyes. Hear the well-intended platitudes that so many offer. See the looks of strangers who wonder over my short hair. Hold anyone else's pain. It has been too much.”

We will take a moment to retrace our steps. As we have seen, if we apply a cost/benefit approach to apprehension and adoption, we might conclude that as long as the best interest of the child is being served, the bad consequences for the birth mothers are a sad but unavoidable result of doing the right thing. In Chapter 1, looking at the history of child apprehension in Aboriginal communities in Canada we saw that ongoing attempts to make policies that are genuinely in the best interest of the child cause us to be mired in an endless cycle of unreflective policy changes that are later found to be wrong. Rather than actually talking about apprehension and adoption, participants take absolutist positions in a highly emotional debate, leading us away from the possibility of establishing an ethical position. Using Foucauldian discourse analysis we have been able to move past these barriers. We have identified some underlying assumptions that have create this situation, and by doing so we have destabilized the master adoption narrative. Foucault has given us a way to look at our past and current understanding of apprehension and adoption, opening it up to new insights. In the concluding chapter I will look ahead, sketching out some of the ways that a Levinasian ethical framework can be applied, and some of the ways that Kathryn Pyne Addelson’s concept of a “moral passage” can give us a more ethical and inclusive way to consider apprehension and adoption in the future.

Chapter 5: Looking Forward

In the previous chapters I considered the way that commonly-used language in cases of child apprehension and adoption can misrepresent, or under-represent the actual experience of the participants, and how the participants (specifically birth and adoptive mothers) can be misrepresented as subject types. The purpose of this work was to unpack the adoption discourse
in a way that shed light on the gaps, the “unsaid”, the missing links in the master narrative. In this conclusion it is my goal to sketch out a way that this kind of adoption might be otherwise discussed and carried out more ethically. This involves better recognizing the silences of those gaps. I will begin by identifying two features of public discourse that tend be a distraction from what I think is a more authentic, ethical discourse, first- the tendency to take oversimplified binary positions on multifaceted issues, and secondly, the use of seemingly value-neutral factual information as “truth-telling” which can function to convey a distorted view of the complexity of a situation by failing to include counterbalancing facts.

1. The problem of over-simplicity: why it is easy to take positions and why that interferes with ethics.

As we noted in the introduction, when discussions arise about adoption that involve children who have been removed from the care of their parents and been made Crown Wards, there is a tendency for bystanders to take absolutist positions. Some may say that women who have addictions should not be parents- they have forfeited their right to motherhood. For example, a newspaper commentary about the death of a child due to neglect by his mother, who had an addiction to heroin concluded, “No child should be condemned to this life of misery because they were brought into the world by a hopeless drug addict… How many more children have to die before the policy is changed not to give drug addict parents their children? ”.94 From this stated position, apprehension and adoption of children is both absolutely right and necessary. Others rally around birthmothers no matter what, saying that apprehension is a form of legal kidnapping. One website advises parents about what they could do to regain custody of their

children following apprehension, describing child protection as a system designed to “tear families apart” : “Most families attacked by Children’s Aid cannot spend the over fifty thousand dollars that it takes to bring a case to trial. For CAS victims who must rely on legal aid, there is no reliable way to save your family, only a few tips that may slightly improve your prospects. Should you get in a court battle with only legal aid lawyers, your chances of keeping your family undamaged are small… Say as little as possible - they will twist every fact against you.”\textsuperscript{95} This assessment and judgement on both sides is meant to result in the “best interest of the child”, even though it points to conflicting conclusions.

Houle discusses a similar bifurcation tendency in the issue of abortion- an equally sensitive topic- that tends to take one of two seemingly irreconcilable positions: pro-choice or pro-life. She writes, “Whenever someone hears that I am writing a book on abortion her very first question is invariably: \textit{What is my position?} Or she announces her position and we proceed from there. Announcing one’s position on abortion… is a stand-in for any conversation about abortion.”\textsuperscript{96} Like abortion, child apprehension and adoption is a phenomenon that seems to be particularly able to support mutually exclusive truths. However, position-taking on apprehension and adoption is usually somewhat less direct, so it appears at first glance to be not as moralizing a space as abortion, or even as adoption once was. The positions do not appear as explicitly in favour of, or opposed to, apprehension and adoption as particular practices. Instead, they come to light in ideological statements like this: “Government funded agencies should not be allowed to take children from parents” or, “People who have addictions and insecure housing should not be permitted to keep their children with them”. These ideologies are couched in language about “the best interest of the child”- and we have already identified the moral weight of that phrase.

\textsuperscript{96} Houle, \textit{Responsibility, Complexity and Abortion}. 59
When I myself discuss the issue of apprehension and adoption with others I sometimes express the grief I feel that my children never had the opportunity to know their mothers. A common response is, “But don’t you think that they are better off with you?” Another response, far less common is, “How could you have let that happen?” It divides the issue into two sides- one is that it is absolutely right and necessary. The other is that it is absolutely wrong and unnecessary. Both of these responses serve to confine discussion about apprehension and adoption to a much narrower range of cognitive tasks: assessment and judgement.

In personal accounts of apprehension and adoption, position-taking is clearly evident. Adoptive parents tend to make the assumption (and restate, when asked) that it was right and necessary for the child to be removed from the birth family, and that they are therefore entitled to raise the child. This position can be demonstrated passively by a total lack of attention to the child’s previous family. Dr. Brynn Welch (Assistant Professor of Philosophy at Emory and Henry College) wrote some reflections on her experience with adoption. In Welch’s case, the birth mother had made an adoption plan, and selected her as the adoptive parent in advance of the birth. She describes the waiting: “The period when a birth parent has selected adoptive parents but the adoption is not yet final – is far more terrifying than I could hope to convey here. Unfortunately, the combination of curiosity and protective instincts often combines so that prospective adoptive parents spend a good portion of their match time fielding questions about the various ways in which this could go wrong and listening to advice about how to feel about the situation. None of this is malicious. In the worst case, it’s unthinking. In the best case, it’s motivated by a strong desire to protect a loved one from unbearable loss”.97 This is an experience that will certainly resonate with many adoptive parents, but it is remarkably

egocentric. The potential for “unbearable loss” is targeted at the adoptive parents, if the birth mother should decide to keep her child, or if the child should be returned to her by the courts. No mention is ever made of the “unbearable loss” that the birth mother could also incur, if the adoption happens.

Birth mothers accounts of having their children apprehended can be equally set on a binary position, dismissing any personal responsibility for the situation that led to her loss of custody. One woman wrote of feeling “set-up” - that CAS actively created a situation that would result in her loss of custody:

“Our municipalities build our towns, and sub-divisions with foresight (hence, the term “city planning committee”). They know WHO is going to live there, including what type of class, nationality, and so on, is going to shop there! They KNEW that low income people (sometimes desperate people) just MIGHT spend their money trying to strike it rich, or drink their despair away. Rideau Heights was a trap between the 1990's straight through to the mid 2000's, and it's still a trap for the CAS. They still patrol the apartment buildings, and town houses - just WATCHING for kids and parents to do something wrong.”

That categorical bias evident in any personal account is to be expected. The nature of loss of custody and adoption is deeply emotional in a way that can hardly be overstated, and both sides genuinely believe that they are advocating for the best interest of the child. However, it becomes problematic when this “side taking” takes the place of ethical discussion, and does not lead to actual assessments of concrete outcomes.

2. Language and characterization that is factual without being complete

The use of language in discourse- written or spoken- is always purposive. It is meant to do something. It can be used to explain concepts and impart information- like weather reports or

instruction manuals. We may use language strategically in a way that justifies our actions and choices, by only mentioning details that support our version of events—such as when we explain our car accident to the insurance company. We may use it maliciously, to make a person or idea look bad, as occurs in mudslinging ad campaigns by politicians. Or, we may use language habitually, to unconsciously strengthen long-held beliefs and opinions. Regardless of purpose there will, in every discourse, be ideas that are expressed and ideas that are omitted. It is not possible to address every facet of a situation in a balanced way. In many situations, this is acceptable, and even desirable. For example, in this work, I am addressing a very specific kind of adoption—the adoptions that occur following child apprehension in Canada. When I do this, I fail to address a host of other possible adoption scenarios—kinship adoptions, international adoptions and open adoptions, just to name a few. To try to address all of these situations would render my work incomprehensible; including ideas that are not relevant to my project, however interesting and important, would not allow me to communicate my point effectively. However, as we will see, a problem exists when language that oversimplifies multifaceted situations is the presented as if the whole story, or at least the most important part of the story.

As we have explored in Chapter 2, one purpose of discourse analysis is to “unsettle” a topic—“to open up space for thinking about [the topic] without pre-emptively putting into play any or all of the seemingly unquestionable truths…”99 Some of the most difficult elements of discourse to identify is the use of factual information to validate situations that may be unjust. In the cases of birth mothers who have had children removed from their care, selected facts can be cited to justify the apprehension. We may say that this act is warranted because she is, in fact, addicted to illegal drugs. She is, in fact, insecurely housed. She is, in fact, suffering from mental illness.

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99 Houle, Responsibility, Complexity and Abortion. 10
All of these true facts combine to create the image of a person who is an unfit mother. This image is reinforced further by the fact that the people who are heard, the people who are included, are the people who select the discourse- who decide what facts are presented and what facts are not. Recall Foucault’s analysis of expert testimony: He demonstrates that expert testimony in legal cases serves to convict a person for being a certain kind of person, to the side of them actually committing the crime. Expert testimony creates a category of moral faults- a condition that is close to being an illness, but is not an illness since it is a moral fault, with implies culpability.\textsuperscript{100} Factual evidence about a birthmother, presented by CAS social workers- the “experts”- can result in a judgment that she is the “sort of person” who should not be allowed to parent, in advance of her acting in any way that endangers her child. The facts are used to form a master narrative that we use as an alibi- we know the facts so there is no reason to feel guilty. But to really understand the situation of birth mothers, it is necessary to move beyond these individual facts to the underlying assumptions and the wider circumstances that create the picture in which we are operating.

Joseph Harker is a writer for the Guardian, a prominent British newspaper. In a similar vein, he considered the issue of facts in understanding racism. The problem, he says, is that “facts in themselves are neutral but their interpretation certainly isn’t. And while on their own facts cannot be racist, the way they are chosen certainly can be.”\textsuperscript{101} Harker provides this example: “If the only time Romanians are spoken of is when they pick pockets, or when they’re seen as unwanted migrants, then the public will end up with a totally skewed view of them. We’ll learn

\textsuperscript{100} Foucault, \textit{Abnormal}, 19-20.
\textsuperscript{101} Joseph Harker, “This is why there are things we don’t say about race (even when they are true)”, \textit{The Guardian}, March 20, 2015. http://www.theguardian.com/commentisfree/2015/mar/20/race-trevor-phillips-racist-facts-criminalisation-communities
nothing about their history or why they came to Britain, or even get a decent idea of what they do here. When we hear about white criminality, such as football hooliganism, lager louts or paedophile rings, we already have enough other information about white people to be able to contextualise this, so we don’t leap to conclusions, and we don’t have high-level discussions about a “crisis within whiteness”. But in the absence of counterbalancing stories, it’s all too easy to begin to build stereotypes about minority communities.”\(^{102}\) This is another social-level demonstration of the doubling that Foucault described, when the offense “is doubled with a whole series of other things that are not the offense, but a series of forms of conduct, of ways of being… that are the cause, origin, motivation and starting point of the offense”.\(^{103}\) Black people are stopped searched by police more often than white people because they seem like the sorts of people who would commit crimes. This occurs prior to any actual crime that an individual may or may not commit. This also shows how language-use and imagery can be stigmatizing and meaning-making, rather than being a simple reflection of society.

Beliefs about birthmothers are created by the same fact-laundering conditions as racism. These facts – of addiction, homelessness or poverty - do not convey an accurate picture due to the absence of counter balancing facts. When we state these facts about birth mothers without saying anything more, we get a skewed view of who they are as people. James Gritter, the author of *Lifegivers: Framing the Birth Parent Experience in open Adoption* attempts to reframe the birth mother characterization by presenting alternate, counter balancing “facts”. He talks about why birthmothers are in fact brave, independent and forward thinking people who act in their own, and in their child’s best interest. “If we can’t learn from people who have found ways to rework devastating situations and turn them into something constructive, who can we learn

\(^{102}\) Harker, March 20, 2015.
\(^{103}\) Foucault, *Abnormal*, 15.
Although Gritter’s approach is equally selective in choosing which facts to present, his efforts to contextualize the birthmother characterization is an example of how adding counterbalancing facts makes for a richer discourse, one that complicates the master narrative in productive ways.

So, a more ethical discourse is one that works to include counterbalancing facts and one that avoids simply taking a position. These tools of discourse can open the way for a richer discussion about apprehension and adoption, without falling back into well-worn paths of factually justified absolutist positions. Houle described the benefits of this sort of discourse: “This strategy opens up a space for thinking about abortion without pre-emptively putting into play any or all of the seemingly unquestionable truths”. We will now go on to consider ways to employ these tools to create a more complete, inclusive discourse.

Towards a more ethical discourse: some preliminary ideas

We will now consider ideas from two contemporary moral theorists that can provide tools to address the exclusion and silencing that has been revealed in discourse of apprehension and adoption. The first is the foundations idea of “infinite responsibility” as put forth by Emmanuel Levinas. Levinas gives us a way to reconsider our ethical obligations to others in a way that other moral frameworks do not address. The second is Kathryn Pyne Addelson’s conception of “moral passages” and the approaches that she identifies as ones that can be used to collectively work to change narratives that exclude and marginalize.

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105 Houle, *Responsibility, Complexity and Abortion*. 11
“Infinite responsibility”

Levinas presented the idea of “radical responsibility” - that every person has a primary, absolute responsibility to every other person:

Responsibility for the Other, for the naked face of the first individual to come along. A responsibility that goes beyond what I may or may not have done to the Other or whatever acts I may or may not have committed, as if I were devoted to the other man before being devoted to myself. Or more exactly, as if I had to answer for the other's death even before being. A guiltless responsibility, whereby I am none the less open to an accusation of which no alibi, spatial or temporal, could clear me.  

To Levinas, our obligation to respond to the face of the Other - not a consequentialist weighing of outcomes, or deontological moral rules- is the heart of ethics. It consists of a moral necessity to see the Other as an infinity- a unique individual that can never be fully known. Levinas says that rather than recognizing the Other as an infinity, as we should, we often instead relate to them as if a totality; that is, by fitting them into our pre-established conceptions- by “understanding” them. This objectification is a violent act, a kind of symbolic killing of the Other. To Levinas, that is the heart of injustice- when we treat people as a totality, not seeing the infinity that exceeds the totality. Ethical possibility then is the relation to the Other -as an act of imagination and acknowledgment-that can occur in the gap between self and Other.

Dr. Amy Rossiter, in her article, “Unsettled Social Work: The Challenge of Levinas’ Ethics” analyzes these notions of infinity and totality as they can relate to doing social work, which is what CAS does. The ethical mistake made by traditional social work, she says, is that clients are approached, not with the recognition that they are irreducible, unknowable individuals but that they fit into pre-established categories. She talks about the goals of professional social workers- who genuinely desire to know people as individuals, to not objectify them. First, they

are expected to be prepared to have a theoretical framework, before they even meet a client. Then, using this information they seek to “understand” the situation of the client- to identify with them- “anticipatory empathy”. They are to use active listening, so that they can “truly hear” what the client is saying. But, by trying to increase their understanding of the Other, the worker actually brings the Other into her pre-established conceptions. Rossiter is left with this critical question: “How can I consider a social work relationship if “knowing” people is ethical “murder”, in Levinas’ terms?”

The policies and procedures that social workers who work for CAS follow can certainly lead to this sort of ethical failure. CAS workers are trained to recognize situations that statistically may result in a child being at risk. Clients are “known” to the social worker- as mentally ill, as poor, as addicted, as inadequate parents. Rossiter recognizes that this is an unavoidable part of social work, despite the best intent of the worker to treat each person as an individual. She says, “We might say that we can ‘acknowledge difference’, as social work has tried to do for years, but this does not solve the problem because even what is different pulls people into our already made concepts of difference and sameness”. Her solution lies in adding a layer, which she calls “unsettled social work” that favours individuality over understanding: “An encounter with utter uniqueness means that I must refrain from treating the other person as an extension of my categories, my theories, my habitual or learned ways of perceiving others”. So, rather than making understanding of the Other the goal of interaction, the worker could instead approach the client with the acceptance that the Other is inherently unknowable. “It is an insistence that an orientation to singularity requires the distance that allows

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108 Rossiter, 988.
109 Rossiter, 985.
us to suspend assumptions, place what we think we know at risk and leave ourselves open to revelation from the Other: in other words, to place ethics before practice”.  

Rossiter’s suggestion is an excellent way to consider how CAS could work with families in a more ethically responsible way- to avoid prejudging a situation, looking for uniqueness in all individuals, and to “practise without allowing the ‘answer’ to dominate the value of the question”.

Yet, in situations of child apprehension there is an important complication. There is not just a birth parent, there is a child as well, and it is the child that legally must be the CAS worker’s first priority. Officially, in cases when a child is apprehended at birth, the CAS worker must make decisions that are deemed to be in the best interest of this voiceless Other, even if those decisions are not in the best interest of the birth mother. This is her responsibility. This is the law. How can this apparent conflict between the demands of Others be resolved? Rossiter also notes the necessity of laws and policies and the conflict that can result. She says, “Here is the deep human dilemma: we cannot do without totality, because we need to have systems of language and thought in order to have justice. The idea here is that we have a cosy ethical relationship between the singular Other and me. But what if a third person comes into the picture? How would I respect the needs of more than one person, especially when their needs conflict?” Levinas is clear on this point. Doing what the law (or institutional policies, or common ideas of limited obligation) demands does not satisfy the full moral responsibility to the Other. Unethicality exists when “certain extent” is taken to be the full extent. Justice demands that we go beyond totalities. Our responsibilities to the Other extend to every person- unlimited, non-transferable. To fail to recognize this, in the way that the adoption narrative does to the

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10 Rossiter, 991.
11 Rossiter, 992.
birth mother, is to end up ignoring the Other, reducing them to a totality- the ground of violence and exploitation.

“Moral Passages”

When we consider the endless obligation of Levinas’ concept of infinite responsibility, and the devastating human toll of the practice of child apprehension and adoption, it is easy to become overwhelmed. How can we possibly make a difference? Kathryn Pyne Addelson, in her book Moral Passages, provides a pathway forward from seemingly intractable ethical situations, and outlines the role that the “experts” - the moral theorists, the academics, and the professionals can and should play in creating change. This could be applied to apprehension and adoption. Addelson analyzes how social norms and institutions have altered over time- how the excluded become included- and how those changes are enacted. This is similar ground to what Foucault covered- the functions of binaries such as “included” and “excluded”, and the way that sovereign power is exercised in the positive half of the binary. Addelson takes a different perspective on this analysis by looking at how it can happen that different people come to occupy the positions of power within the binary. For example, homosexual people used to be excluded. Their viewpoints and their knowledge of the world were hidden. They were not a part of the “we”- as in “this is the way that ‘we’ should live”. In what Addelson calls a “moral passage”, the gay perspective became seen, and over time homosexuality itself was legitimized. Addelson says that this kind of shift is a change in public morality that does not affect people simply as individuals. “It is not only a change in the understanding of how ‘we’ should privately live (homosexual vs. heterosexual), it is a change in who ‘we’ are- and of course this is evident to gays and lesbians, for in the past, qua homosexuals, they have been excluded from the ‘we’ and their lives and history hidden away”. It is a change in how the ‘we’ is constituted, a change in
who has the authority and the power to generate the ‘we’, and to define the public morality”.

Frank Bruni of the New York Times, commenting on the recent Supreme Court of the United States decision to legalize same sex marriage observed, “The Supreme Court’s decision wasn’t simply about weddings. It was about worth. From the highest of this nation’s perches, in the most authoritative of this nation’s voices, a majority of justices told a minority of Americans that they’re normal and that they belong — fully, joyously and with cake.” In this example of a moral passage we can see Foucault’s conception of the binary of “included” and “excluded” still exists. Now that gay people are “included”, we can see clear evidence of the “excluded”: right-wing politicians and religious leaders who publicly denounce homosexuality—once seen as voices of public morality— are now dismissed by the majority as uninformed bigots. Looking backward through history it is easy to see examples of this kind of shift in society—racial desegregation, advances in women’s rights and greater inclusion of people with disabilities. But, it is not enough to observe that this does happen, what is valuable is the understanding of how it happens and to use this insight to try to shift some of the systemic exclusions in apprehension and adoption today.

Addelson examines how societal change happens by a process of making moral problems public. She offers several examples, including an historical analysis of abortion. Prior to the mid 1800’s, the body was viewed as a whole entity, rather than an organ system comprised of parts, requiring balance and moderation, prone to strong or weak constitutions rather than being susceptible to certain diseases. This paradigm led to a belief that early pregnancy (a stoppage of menses) was an imbalance, and could be cured by abortion without any moral concern.

112 Addelson, Moral Passages, 49.
“Quickening” was the point when a fetus was seen to have human life. To redefine abortion as a moral problem “required a redefinition of the health paradigm and a redefinition of fetal life”. 114 This became part of a more general campaign to place doctors in the position of moral and medical authority- a shift that replaced priests in that social role. Addelson outlines the development of the American Medical Association, the public crusades of doctors- including Horatio Storer who “used his status as an elite physician to argue against the ‘quickening’ doctrine, saying that current medical knowledge showed fetal development to be continuous from conception, with no discernible change that signified ensoulement”. 115 Therefore, according to medical authority (Addelson calls the people in this position of authority “knowledge-makers”, Foucault calls them “experts”), abortion was now immoral- a kind of killing- and this new knowledge became “public understanding”. This example demonstrates that paradigms shift by previously unseen moral problems being made public, and that the idea of what even constitutes a moral problem evolves gradually. We can see that new moral problems around abortion- such as the right of women to have reproductive choices- continue to gain authority as moral issues.

A more recent and local example of this came to light in Guelph. It used to be common practice around 50 years ago to institutionalize children who had serious disabilities. It was seen as the appropriate and most advantageous thing to do for both the family and the child. This began to be seen as a problem, and alternatives and reforms were proposed by knowledge-makers, such as doctors and psychologists. Gradually, institutionalization occurred less often, and more resources became available for families to look after their children themselves. Eventually, schools and the rest of society were expected to be accommodating to children with

114 Addelson 64.
115 Addelson 65.
disabilities as well. In March, 2015, an indoor playground facility in Guelph had a rule that all children playing must wear socks—shoes were not permitted. As a result, a four year old child with a physical disability that required her to wear supportive shoes was turned away from the facility. The public response on social media, news agencies and word of mouth was outraged and instantaneous. With threats of lawsuits and boycotts, the owners of the facility recanted the rule and publicly apologized. What is interesting here is that this is not simply an isolated event. It is reflective of a paradigm shift— all children with disabilities are no longer to be excluded anywhere. They are now part of the “we”. The moral problem of exclusion of disability was made public and the new paradigm was enforced by collective action.

Addelson says that for this process to occur there must be a judge, or a “judging observer”. Though the future may seem indeterminate, the judge may look back on a past that seems fixed, and discover the preconditions of action such as motives, reasons, character traits and emotions. This is a “backward-looking” sense of responsibility. Anyone can be this judge—“to become capable of knowing and judging their past, and planning the future”. The “backward-looking” judge asks, “Who is responsible for this?” This can serve to identify particular individuals who are liable or blame worthy, but it’s most important role is finding responsibility in collective action. Addelson writes, “For example, when feminists or other liberationists discuss responsibility for gender, race, class dominance or oppression, they make their arguments incoherent if they use the juridical notion of responsibility-as-blame. Their success in making their points and finding solutions requires a different understanding of

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117 Addelson, 139.
responsibility.\textsuperscript{118} The existence of professionals in any field is justified by the idea that they, as a collective, in some capacity serve the public good. But, it must be understood that professionals have a role in defining public need and good that they serve. So, in looking at an organization such as CAS, the role of professional social workers and policy makers is justified by the fact that they exist to serve the public good. But, by making and enforcing rules, by setting standards and protocols, they define the public good that they are mandated to uphold. Addelson calls this the responsibility of professionals, which is a responsibility of collective action. In other words, when a moral problem has been identified, it is the responsibility of the “knowledge-makers” to take steps to make that problem public, not for the purpose of casting blame, but to create a future so it can become a collective understanding.

Historically, in the practice of apprehension and adoption, we have seen that in the 1950’s and 60’s, young unwed mothers had their babies taken from them and given for adoption for reasons that seemed legitimate and moral at the time. Common understanding now – as this moral problem became public – says that single women can parent; that being young is not in itself a reason to take a baby from a mother, and that the practices of the past were deeply damaging and regrettable for both the children and the mothers. This understanding of how public understanding of an issue can shift, that the excluded can become the included, gives us a way to respond to the problems we have uncovered around apprehension and adoption with new hope and a way forward.

\textsuperscript{118} Addelson, 140

Using discourse analysis, this paper has sketched a path from analysis of specific language-use, to the examination of specific personae, in order to reveal the gaps in the discourse
of child apprehension and adoption and then to ways that apprehension and adoption can happen in a more ethical way. My goal in the remaining parts of this paper will be to briefly sketch out four practical ways that we can move into the future as a collective, understanding the obligations of infinite responsibility and creating a moral passage that makes the process of apprehension and adoption more ethical:

1. We can hear the stories—there is not just one master narrative.
2. We can see the faces—we can respond compassionately.
3. We can change the language.
4. We can change the practices.

1. Hearing the stories: the value of narrative as reflective of gaps in discourse

In Foucault’s method of discourse analysis we have seen that a necessary part of every discourse is that some voices are heard while others are marginalized and that power functions by and through the voices that are heard. Foucault and Addelson both observed that although some voices are excluded from discourse, in principle they should be heard, as their voices are part of the landscape of meaning—not wholly outside it. David Geiger, in his paper “The Dark Side of Narrations” named the problem with this kind of exclusion. He said, “There are systemically suppressed voices which nevertheless might have some very important claims that should be taken seriously. Put differently, narrations as the blind and rejected spot of every discourse represent the suppressed voices which are excluded from discourses… This is an important function of narratives, since they make suppressed voices heard and make room for all
those knowledge claims which do not find a place in discourse”.119 In researching this project, I found strong evidence that some voices are heard in a more legitimate capacity than others. Stories about the benefits of adoption are easy to find, and serve to smooth over the messy back story of apprehension. The authorized voices- from CAS, from adoptive parents- exist in books that are sold in bookstores, on government websites, in newspapers and in speeches during Adoption Awareness month. The voices of the birthmothers are rarely heard. They can sometimes be found on private websites that are working to promote the stories of marginalized people. They can be found in face to face conversations with women who have lost custody of their children. But their stories are difficult to uncover. It is easy to adopt these apprehended children-as I did- without having any real sense or understanding of where they came from. If we turn our attention only to the official narrative, we are missing an important part of the story.

In the 50’s and 60’s, when children were taken from young unmarried women, these women had no legitimate voice. They were expected to keep silent about their experience, and move on with their lives as if it had never happened. But, through the moral passage that we considered in the last section, their stories came to light- the moral problem became public. Now it is possible to find many of these narratives in credible sources- in anthologies, sociology text books and research papers, and the lessons learned are present now in child welfare and government policy. These historical mothers are no longer excluded from discourse; they are now part of the collective “we”. This paradigm shift took place in a matter of decades. In child apprehension practice now, it is certainly possible for a similar shift to occur but the first step is to recognize that this is still moral problem- it has not been solved or neutralized. To do this, those who have

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access to the power in discourse- the included, the heard and the safe- must find ways to actively seek out the marginalized voices, and hear the narratives that are missing in this discourse.

2. Seeing the faces: recognizing the individuals affected by child apprehension

As we considered in Chapter 3, during a pregnancy it is widely assumed that the proximity of the fetus to the birth mother results in connection. Her body changes in ways that she cannot control, and her life changes as a result of the Other inside her. If the infant should die, this death is not comparable to any other loss. “The enduring pain of losing a child cannot be measured, so it is impossible to say if it is more or less painful to lose a child suddenly, or after a long debilitating illness; nor can it be assumed that the age of a child determines the intensity of emotions…” Most often “losing a child” refers to a death and is seen as one of the most tragic losses a mother can experience. This was not the result of giving birth that she had envisioned. The grief and pain surrounding it will affect her for her whole life, as well as other members of her family- a person who could have been, but was not. The loss of a child to adoption seems comparable to a death in some ways, but perhaps even more difficult in other ways.

Literature that examines the loss of a child through Sudden Infant Death Syndrome (SIDS) – cases of infant death that have no apparent cause- can help to identify similarities between death and apprehension. Celia Hindmarch, in her book On the Death of a Child discusses the importance of a compassionate response when working with families of victims of SIDS:

No one can prevent the pain a family will feel or protect them from experiencing grief following the sudden, unexpected death of an infant. If the professionals who assist with the infant and interact with the infant's family are compassionate and knowledgeable, there is

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potential for the surviving family to achieve a more healthful outcome from this difficult experience. Throughout, extreme care must be taken by the emergency responders not to suggest by word, facial expression, tone of voice, or nonverbal actions that any blame or suspicion is being attached to any individual. The family may misinterpret the slightest gesture or casual comment. 121

There are clearly differences between SIDs and child apprehension, but there are ways that this experience can be seen as providing useful ethical guidelines for action in loss of custody. Loss of a child to SIDS is unexpected, there was little or nothing that parents could do to avoid it. There is tremendous public support. Blame is not ascribed to parents. There will be a kind of funeral or memorial. Subsequently born siblings will be told often about the dead child, as the child is an enduring presence in the family. Families will go on, but it is accepted that it will never be the same. Most of this understanding and support is missing for women who lose custody of their children. In the case of child apprehension, the birth mother may be seen as blameworthy for the loss of the child. Her loss will not be openly acknowledged as a tragedy. Public sympathy may be limited, and her grief is not seen as legitimate as in the case of SIDS. Though the ideas around what sort of loss this is like may be up for discussion, it seems clear from our own understanding about pregnancy and giving birth, that the loss to the birth mother is likely to be deeply significant.

It is important to remember that a mother who has a child apprehended shares some important similarities with a mother who loses a child to SIDS; she gave birth to the child and wanted to parent her, and the loss has permanent implications, not only for her, but for her extended family as well. Levinas says that to make suffering meaningful, we need to personally take on the responsibility of the Other. “With this judgment, Levinas opens a breach in the usual approach to dealing with the failure of traditional normative ethics. The breach becomes abysmal

121 Hindmarch, On the death of a child. 147
when those normative systems are relied upon in the face of the overwhelming intentional infliction of and casual indifference to countless sufferings.”

This “casual indifference” causes devastation for the birth mothers. “Although society expects the relinquishing mother to resume her former role as if the experience had not occurred, these women are at risk for long-term physical, psychological, and social problems. Lack of social acceptance of the grief of relinquishing mothers contributed to chronic, pathological grief… Many birth mothers have indicated that they did not receive acknowledgement of their loss from health professionals involved in their care.”

This is a clear point of intervention. Providing adequate supports for women and families who lose their children in any way is vital to recognizing them as part of the “we”, of acknowledging them in an ethical way.

3. Changing the language

In chapter 3 we looked at several phrases that are commonly used in apprehension and adoption discourse: “voluntary and involuntary relinquishment”, and “apprehension”. We could see that these phrases were used in this discourse to represent different situations than in other contexts. “Relinquishment” is inherently voluntary in every other context, yet the term “involuntary relinquishment” is used to describe women who lost custody of their children against their will by a court order. “Voluntary relinquishment” describes situations when women gave up their children without a court order, even if they were coerced or had no other options available to them. “Apprehension” is what CAS does when they remove children from a family, but in other contexts this word is only used to describe the capture of criminals. These are clear

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123 http://www.urbancentre.utoronto.ca/pdfs/researchbulletins/CUCSRB34Novacetal.pdf
examples of language that create meaning that is not true to reality. It allows the clean, dominant narrative, which imagines the birth mother, acting as a free agent, making a selfless choice for her child—bequeathing her to a family that is better equipped, and generously willing to raise her as though she was their own biological child, to appear as the whole story. This must change throughout written and spoken discussions of apprehension and adoption— in literature about adoption, in official policies, in newspaper reports, in personal narratives— in order to create a more ethical discourse. We need new words.

Beyond these phrases that were examined in chapter 3, there are other common ways of talking about adoption that avoid responsibility and create meaning that is not reflective of the full story. In some cases, adoptive families often tell their stories in a way that glosses over the child’s origins. For example:

> When we saw the picture of Kevin, who was eight at the time, something just clicked. I didn’t really believe it would happen, but we spent a week with him and that was it. Everything fell into place so quickly and it is like he has always been a member of our family. Recently our oldest daughter had a baby girl so now we are grandparents and Kevin is an uncle. We are truly blessed with such a rich life. Kevin reminds me of this every day and likes to say, “Before you found me I didn’t have a forever family of my own.” When I try and put myself in his shoes I think that we might just have to make more room in our family for another older child or youth who is still waiting to be “found.” (Italics mine) 124

As an adoptive parent, I continue to critically examine and adjust my own language. For example, in the past I described myself and my children as being a “Forever Family”, as though their families of origin were somehow temporary. I used to refer to my children’s biological parents as “birth parents”, as though birth were the extent of their contribution. Now, especially when I talk to my children, I make no distinction between parents, referring to their birth mothers as well as myself as “mother”, without qualification.

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3. Changing the practice

Earlier in this thesis, I demonstrated that the “best interest of the child” practices by CAS could not be as easily or simply ethically justified as assumed. First, there is no evidence that current practice of apprehension and adoption are always in the best interest of the child. Second, adoptive families are privileged, making current practice seemingly more about what sort of families are most valued in society, rather than the genuine “best interest of the child”. Lastly, the very process of determining what is in the best interest of the child – that cost/benefit analysis – leads us away from an ethical position. Levinas’ concept of infinite responsibility comes into play here – we need to respond to each person in the narrative, not just to the child.

In their article “Maternal outcasts”, Karen Broadhurst and Claire Mason summarize what needs to happen to make, at least in principle, the “best interest of the child” an ethically viable, position: “As a child-centred discourse now comes firmly centre stage, there may be something of an acceptance of the ill-fated lives of these women as inevitable by-products of a system orientated to rescuing children. However, to call for a concerted agenda focused on maternal rehabilitation is not a case against either compulsory removal of children, or the tackling of delay. However, it is a call for a concerted national agenda to draw these mothers back from their potentially exiled position”.

This approach recognizes that although in some circumstances removing a child permanently from a family is the only option, the birth mother is always a person worthy of consideration and recognition – both as an individual and as a continued presence in some capacity in the life of her child.

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One possible way that this could be carried out symbolically is a change in the policy of issuing new birth certificates for adopted children. When adoptions are legally completed, most adoptive parents change the child’s name - at least the last name, and sometimes the entire name. This is their choice to make. The child is given a new birth certificate that only includes this new name. A more inclusive practice, which honoured instead of erasing a child’s previous family, could allow her original name to remain on the new birth certificate, in addition to the adoptive name.

Another practice that could serve to “draw mothers back from their potentially exiled position” would be to prohibit “closed” adoptions- those that ban all contact between the birth family and the child following the adoption. Recent research has found that outcomes for adopted children are better when the adoptions are open, but for a variety of reasons closed adoptions are still common.\(^{126}\) Officially, closed adoptions are chosen for the safety of the child, but underlying this seems to be the assumptions that we have considered earlier- that certain mothers have forfeited their relationship with their child, and that it would be more desirable for the child if she was no longer in his life. “Open” adoptions involve an agreement to maintain some sort of contact with the birth family, but keeping that agreement after the adoption is finalized is entirely choice of the adoptive family, and not enforceable in any way.\(^ {127}\)

Maintaining a connection between a birth mother and child as a matter of policy, even if the

\(^{126}\)Summaries of several research studies can be found on this adoption website, \url{http://www.adoptionhelp.org/open-adoption/research} including: “the research showed that adoptees in which their adoptive and birthparents had collaborative relationships were doing better on ratings of psychosocial adjustment” and, “All of the adoptive parents saw openness as helping their child deal with identity issues, and none felt that openness exacerbated the issues of adolescence. All of the adoptive parents expressed positive feelings about open adoption and noted that no child had run away to live with their birth family.”

\(^ {127}\)Ontario CAS guidelines around open adoption can be found at \url{http://www.oacas.org/adoptionopenness/faq.htm#2}. For example: “Openness does not mean shared parenting; more specifically, adoptive parents make all decisions about the child or youth, regardless of any openness arrangement. The importance of and need for openness can evolve over the course of a child or youth’s life and as per the child or youth’s best interests.”
contact involved only non-identifying information such as update letters from the adoptive family, would demonstrate awareness of the worth of this primary relationship.

**Conclusion**

I began this paper not just with an outline of what I hoped to accomplish, and my method for approaching the issue of child apprehension and adoption, but with my own narrative and desire to make sense of it. I will end this thesis by continuing that story. About two years ago, when my son was 13 years old, he expressed a desire to find his parents. It was important to me that this was his choice, and not just mine, and I was fully supportive of this search. People who are insecurely housed, and have addictions and mental illnesses are often difficult to locate. They live “off the grid” in a way- no mailing addresses, email accounts or drivers licences. We had only their names. Sadly, we found his mother easily, on the Toronto Homeless Memorial- a list maintained by a downtown church to keep a public record of people who have died on the streets of Toronto. She died when he was only 4 years old. We redoubled our efforts to find his father in light of this information, including writing letters to him to all the shelters in Toronto, and all the prisons in Ontario. Eventually we received a letter from him-he was indeed in prison. It was a beautiful letter and for my son it was infinitely valuable. We wrote back quickly but our letters were returned - he had been released and we do not know where he is now. We will continue to search. For my children and I, the issue of child apprehension and adoption is not simply an abstract conversation, it is deeply personal.

There are no easy answers here. This is a reality- not a problem that can ever be solved or eradicated. As I said at the start, there will always be children born to parents who cannot care for them, and other families that want to adopt those children. The recognition of
complexity and responsibility in these unique situations is difficult work, but it is necessary in order to avoid injustice and the marginalization of vulnerable people that is hidden by pat phrases and simple narratives. It is my hope that my voice, joined with the voices of others who work to bring attention to this issue can help to create a more inclusive and ethical discourse for the future.
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