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# THE ORIGIN OF ADOPTION IN SOUTH AFRICA

Sandra Ferreira\*

## 1 Introduction

Adoption is a very old legal institution. In fact, references to informal adoption are found in the Bible and in mythology. In *Exodus* it is explained that Moses was placed among the reeds on the bank of the Nile in a papyrus basket, where he was discovered by Pharaoh's daughter. He was rescued and raised by her.<sup>1</sup> According to Roman tradition, Amulius seized the throne of Alba Longa from his brother, Numitor. Amulius attempted to keep Numitor's daughter, Rhea Silvia, from marriage by making her a Vestal Virgin, but she bore twin sons, Romulus and Remus, with Mars, the God of War. Amulius ordered the children to be thrown into the Tiber. They were left on the edge of the river by the servants, where they were saved from drowning by a she-wolf and reared by her.<sup>2</sup>

The aim of this article is to explore the legislative origin of adoption in South Africa. It is common knowledge that South African law is based on Roman-Dutch principles and that English law has also influenced our legal system. The article starts off with a brief discussion of Roman and Roman-Dutch law, whereafter South African law – as it relates to the legislative introduction of adoption in this country – is discussed. Ultimately a conclusion is reached as to the origin of adoption legislation in South Africa.

## 2 History

### 2.1 Roman law

The origin of Rome as well as the starting point of the development of the Roman people before 450 BC is unsure,<sup>3</sup> but, according to Benet, it seems that adoption was always part of Roman law.<sup>4</sup> In ancient Rome, there was dynastic

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\* Lecturer, Department of Private Law, University of South Africa (BLC LLB (Pret)).  
1 See *Exodus* 2:1-10. This book forms part of the Pentateuch (the first five books of the Old Testament), and was written approximately 1450-1410 BC.  
2 Morford & Lenardon *Classical Mythology* (1999) 533; Benet *The Character of Adoption* (1976) 22. According to tradition, the period of kings commenced in 735 BC, when Romulus became king. This legend thus originates from the earliest development of Rome and the Roman people. See Van Zyl *History and Principles of Roman Private Law* (1983) 3; 5.  
3 Van Zyl (n 2) 3.  
4 Benet (n 2) 29. Cf the adoption of Romulus and Remus by the wolf. See, too, the comments in n 2.

adoption.<sup>5</sup> The aim of dynastic adoption was to serve family and parental interests since it was vital to influential Roman families that they have heirs and that their names should be carried on by later generations.<sup>6</sup> This type of adoption was a method whereby a person without an heir could acquire one,<sup>7</sup> and was thus aimed at serving the needs of the adoptive parent and family.<sup>8</sup> Only later, by the time of the reign of Justinian, philanthropic adoption came to the fore, which took into account the interests of the children.<sup>9</sup>

Adoption could take place in one of two ways, which differed in both form and function. *Adrogatio*, an institution which dates back to the time before the *Twelve Tables*,<sup>10</sup> was a procedure whereby a completely independent person was adopted.<sup>11</sup> The relationship of the adopted person (*adrogatus*) with his former family was totally terminated.<sup>12</sup> The *adrogatus* and his family were placed in the power (*potestas*) of the adopter (*adrogator*).<sup>13</sup> Initially, women<sup>14</sup> and children below the age of puberty (*impubes*)<sup>15</sup> could not be adopted in this way.<sup>16</sup> An important consequence of this was that a person could not adopt his illegitimate daughter.<sup>17</sup> In classical law women were also incapable of adopting, as they did not even have *patria potestas* over their own children.<sup>18</sup>

*Adoptio* was a later form of adoption than *adrogatio* and was directly related to certain principles of the *Twelve Tables* and the old *ius civile*.<sup>19</sup> It was the process whereby a dependent person was adopted.<sup>20</sup> The transaction had two parts. There was a preliminary sale, known as *mancipatio*, where a father

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- 5 Adoption to provide an heir: Blom-Cooper "Whither the law of adoption" 1956 *The Modern LR* 202. This was fairly common procedure in ancient Rome – Griffith *New Zealand Adoption Resource – Adoption History Rationale Reform* Vol 1 (2007) 71. A compact disc, containing this information, was graciously provided by the author.
- 6 Van Zyl (n 2) 92.
- 7 Van Warmelo *An Introduction to the Principles of Roman Civil Law* (1976) 47; *Gai Institutiones* (trd by Poste (1904)) 1 103; Thomas *The Institutes of Justinian* (1975) 1 11 9: adoption took place only in the absence of natural children.
- 8 Van Zyl (n 2) 92. This strong right was seen as benefiting the parent: Sonnekus "Belangefweging by aannemingsaangeleentede" 1985 *TRW* 74.
- 9 Adoption to give a child a family. An ancillary objective was the notion of the family being given a child for the amelioration of family life rather than due to any concept of the perpetuation of kinship: Blom-Cooper (n 5) 202.
- 10 Van Zyl (n 2) 92.
- 11 G 1 99. According to Van Zyl (n 2) 93 there had to be an extensive enquiry to establish whether *adrogatio* was in the interest of the child or not. This was because the entire estate of the child would fall under the power of the adoptive parent.
- 12 Thomas *Textbook of Roman Law* (1976) 437-438; Van Zyl (n 2) 92.
- 13 As mentioned above, this was not to protect the child, but to benefit the head of the household.
- 14 G 1 101.
- 15 G 1 102.
- 16 Schulz *Classical Roman Law* (1951) 146-147. According to Thomas (n 7) 39, Antoninus Pius first allowed adrogation of an *impubes*, and women were first adrogated in the time of Diocletian.
- 17 Schulz (n 16) 147.
- 18 *Inst* 1 11 10; G 1 104; Thomas (n 12) 440; Schulz (n 16) 144.
- 19 Van Zyl (n 2) 94.
- 20 *Inst* 1 11 1; G 1 99; Van Zyl (n 2) 92.

(*pater*) mancipated or sold his son three times to the intending adoptive father or a third person (a confidant). The third mancipation finally terminated the *patria potestas*.<sup>21</sup> Thereafter, there was the act of adoption, where the adopting father claimed the son from the original father.<sup>22</sup> As in *adrogatio*, the adoptee initially passed fully from the *potestas* of one person into that of another,<sup>23</sup> unless adopted by a family member.<sup>24</sup> The adoptee retained no further relationship with his original family unit.

Justinian abolished this form of adoption and replaced it by a far simpler procedure. He dispensed with the sales and considerably altered the consequences of adoption. The two fathers and the *alieni iuris* who was to be adopted would appear before an official. The original father would then declare that he wished to give the child in adoption and this declaration would be recorded by such official in the court register.<sup>25</sup> Justinian also introduced the rule that the *pater adoptans* was to be at least eighteen years older than the person to be adopted.<sup>26</sup> If the adoption was not by a natural ascendant, the effect of the adoption was severely limited in order to protect the person who was adopted.<sup>27</sup> The adoption was *minus plena*, which meant that the adopted person remained in the power of his original *paterfamilias*.<sup>28</sup> He retained his rights of succession against his original *paterfamilias* and did not pass into the *potestas* of his adopter, but acquired the right of intestate succession from his adopter (but not from the latter's relatives).<sup>29</sup> Initially women, not having *potestas*, could not adopt.<sup>30</sup> but Diocletian allowed a woman who had lost her own child to treat her stepson as though he had been born to her (thus basically conferring the right of intestate succession upon the stepson).<sup>31</sup> By the reign of Justinian *adrogatio* of women was permitted,<sup>32</sup> and he retained the provision of Diocletian allowing women to adopt.<sup>33</sup>

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21 G 1 132; Van Zyl (n 2) 94; Dannenbring *Roman Private Law* (1984) 311-312.

22 G 1 134.

23 G 1 107.

24 Thomas (n 12) 441.

25 Van Zyl (n 2) 94; Dannenbring (n 21) 312.

26 Van Zyl (n 2) 94.

27 Dannenbring (n 21) 312; Van Warmelo (n 7) 47. Adoption by a natural ascendant was called *adoptio plena*. Here we see the rights of the adopted child being protected.

28 *Inst* 1 11 2.

29 *Inst* 1 11 2; Thomas (n 12) 441; Dannenbring (n 21) 312.

30 G 1 104.

31 *Inst* 1 11 10; Thomas (n 7) 39-40.

32 Van Zyl (n 2) 93; Schulz (n 16) 148.

33 Thomas (n 12) 440; Buckland *Textbook of Roman Law* (1966) 123-124.

## 2 2 Roman-Dutch law

Roman law had no impact on adoption in Holland.<sup>34</sup> As mentioned above, *patria potestas* was acquired by the Romans *inter alia* through adoption. *Patria potestas* was not recognised in Holland<sup>35</sup> and, as in most European countries,<sup>36</sup> formal adoption was unknown.<sup>37</sup> Parental power in Roman-Dutch law could not be conferred by means of adoption,<sup>38</sup> and the adoption of children had fallen into disfavour.<sup>39</sup> Adopted children in Holland did not fall under the term “children” either in status or in will.<sup>40</sup> Although informal adoptions surely took place, those adopted were not by law considered as children of the adoptive parent, and these children did not succeed in intestacy to the adoptive father.

## 3 South African law

### 3 1 Introduction

In 1899 in *Robb v Mealey’s Executor* the court pointed out that “[t]here is no machinery for adoption ... in Cape law”<sup>41</sup> and that “the law of this Colony does not recognise adoption as a means of creating the legal relationship of parent and child”.<sup>42</sup> Adoption was for the first time legally regulated in South Africa when the *Adoption of Children Act 25* of 1923 came into effect. The absence of such an institution in the early history of South Africa may be explained by the fact that formal adoption did not exist in Roman-Dutch law,<sup>43</sup> and in England

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34 Voet *Commentarius ad Pandectas* 1 7 7 (trl by Buchanan (1880)); Gane *The Selective Voet Being the Commentary on the Pandects* (1955) 143. See, too, Wessels *History of the Roman-Dutch Law* (1908) 417.

35 Grotius *Inleydinge tot de Hollandsche Rechts-Geleertheit* (1767) 1 6 3; Lee *An Introduction to Roman-Dutch Law* (1953) 33; Wessels (n 34) 445. Because adoption was not legally recognised, it did not create a bar to marriage in any way.

36 Benet (n 2) 54-55 looks at adoption through the ages and offers a possible explanation for the rebirth of adoption after the period where no formal adoption was practiced at all. She explains that the “dark ages of adoption” began around the collapse of the Roman Empire in 476. Practices like adoption gave way to the supremacy of blood ties and feudal bonds, and adoption was only reinstated in the English-speaking countries around the end of the nineteenth century. Obviously adoption may have occurred during this time, but because it was *de facto* rather than *de jure*, there is no way of knowing its extent.

37 Grotius (n 35) 1 6 1. Van der Linden *Regtsgeleerd, Practicaal en Koopmans Handboek* I IV II. De Blecourt & Fischer *Kort Begrip van het Oud-Vaderlands Burgerlijk Recht* (1959) 88. In *Robb v Mealey’s Executor* (1899) 16 SC 135, 136 Innes QC, for the defendant, stated that there was no machinery for adoption in Roman-Dutch law. See also Mosikatsana “Adoption” in Van Heerden *et al* (eds) *Boberg’s Law of Persons and the Family* (1999) 435; Spiro *The Law of Parent and Child* (1985) 4, 62. Although *de facto* adoption probably took place, there was no *de jure* adoption. A possible exception was Friesland. According to Voet (n 34) 1 7 7 there was a perception that adoption still existed there since Frisian statutes never abolished adoption. However, he believes this argument to be weak. Studiosus “Die aard van die gesagsregte van ouers ten opsigte van hul minderjarige kinders” 1946 *THRHR* 45.

38 Lee (n 35) 38; Van der Linden *Regtsgeleerd, Practicaal, en Koopmans Handboek* 1 4 2.

39 Van der Westhuizen “Erfopvolging by versterf in Suid-Afrika (vervolg en slot) 1949 *THRHR* 126.

40 Spiro “Adoption and the conflict of laws” 1983 16 *CILSA* 242.

41 (n 37) 135.

42 (n 37) 136.

43 Cf s 2 2 above.

the first adoption legislation, the *Adoption of Children Act*,<sup>44</sup> was enacted only in 1926, three years after the promulgation of its South African counterpart. Clearly Van der Merwe and Rowland did not take the latter fact into account when they suggested that the South African Legislature was possibly influenced by English law when it enacted the first adoption legislation.<sup>45</sup>

### 3 2 Legislation

#### 3 2 1 *The Adoption of Children Act*

It is apparent that the South African adoption legislation was based neither on Roman-Dutch law, nor on English law. The Debates of the House of Assembly supply the answer to the origin of South African adoption legislation. Although it was not an exact copy, the Bill, which preceded the 1923 Act was, in fact, modelled on the *Infants Act* 86 of 1908 of New Zealand.<sup>46</sup>

The Bill to provide for the adoption of children<sup>47</sup> was first read on 30 January 1923 in the House of Assembly of the Union of South Africa by Mr R Feetham, a member of the House of Assembly.<sup>48</sup> The Bill was set down for a second reading on 15 March 1923. On the day of the second reading of the *Adoption of Children Bill*,<sup>49</sup> Mr Feetham gave a lengthy presentation and explained the need for formalising adoption in South Africa, saying that this need arose because of the number of informal adoptions which had taken place.<sup>50</sup> The problem with the informal adoptions, he explained, was that the rights of the natural parents remained unaffected, and that any possible agreement that might have been entered into between the natural parents and the adoptive parents was not considered binding by the courts. He concluded that the adoptive parents had no legal rights over the children. He further explained that

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44 1926 (16 & 17 Geo 5 c 29).

45 See Van der Merwe & Rowland *Die Suid-Afrikaanse Erfreg* (1990) 83. They based their view on the statement in *Wille's Principles of South African Law* (Gibson (1977) 80) that the English legislation on adoption at the time (Gibson refers to the "Adoption of Children Act, England, 1927", but presumably this is a typing error, as this legislation was enacted in 1926) was practically identical to ours. This piece of legislation was only enacted in 1926, while the South African *Adoption of Children Act* had already been enacted in 1923. I believe that the statement in *Wille's Principles of South African Law* probably suggested the complete opposite to how Van der Merwe & Rowland interpreted it. It is, in fact, quite possible that the English Act may have been modelled on the earlier South African legislation. This was not investigated.

46 At the second reading of the Bill on 15 March 1923, Mr Feetham indicated that it was modeled on New Zealand's *Infants Act* 86 of 1908, which is discussed in more detail in s 3 2 2 below.

47 *The Adoption of Children Bill* 25 of 1923.

48 This was reported in the *Cape Times* on 31 January 1923, and reproduced in the "Debates of the House of Assembly of the Union of South Africa as reported in the Cape Times 20th November, 1915 – 25th June, 1923" at 31.

49 As reported in the *Cape Times* on 16 March 1923 and reproduced in the "Debates of the House of Assembly of the Union of South Africa as reported in the Cape Times 20th November, 1915 – 25th June, 1923" at 159.

50 *Ibid.* Contributions were also made by a number of other people.

many people shied away from adoption because of the insecurity of their position, even though they might have been able to provide the children with a good home.<sup>51</sup> He concluded that this situation resulted in a loss not only for the prospective parents and the children, but also for the state, because these children were brought up in institutions instead of family homes.<sup>52</sup>

The House of Assembly went into Committee on 16 April 1923 and made some minor amendments to the Bill. It was then read again on the same day and an order was made for it to be transmitted to the Senate,<sup>53</sup> where it was first introduced on 3 May 1923,<sup>54</sup> for its concurrence. It was subsequently referred to a Select Committee for consideration, after which it was debated, read for a third time, and passed.<sup>55</sup> On 21 June 1923 the Minister of Justice<sup>56</sup> (on behalf of the Prime Minister) announced that the His Royal Highness the Governor-General, in the name and on behalf of His Majesty the King, assented to the *Adoption of Children Act* 25 of 1923. The Act was promulgated in the *Government Gazette*,<sup>57</sup> and it came into operation on 1 January 1924.<sup>58</sup>

### 3 2 2 *A comparison between the South African and New Zealand Acts*

Although the first modern adoption legislation in the English-speaking world was enacted in Massachusetts,<sup>59</sup> the *New Zealand Adoption of Children Act* in 1881 was the first legislation in the British Empire<sup>60</sup> enacting adoption. The New Zealand Legislature pioneered legislation in other parts of the Commonwealth.<sup>61</sup> Family law in New Zealand has its origins in England,<sup>62</sup> but Inglis<sup>63</sup> points out that the divergence between English and New Zealand family law was so pronounced in many fields that any resemblance between the two

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51 In this regard, see also my observations about the existence of informal adoptions today in the conclusion below.

52 Mr Feetham acknowledged the great service that the State provided, but added that an institution could never take the place of a family home.

53 As reported in the *Cape Times* on 17 April 1923 and reproduced in the "Debates of the House of Assembly of the Union of South Africa as reported in the Cape Times 20th November, 1915 – 25th June, 1923" at 221-222.

54 It was introduced by Senator, the Hon AH Watkins, MD.

55 This occurred on 12 June 1923. The Dutch version was signed on 20 June 1923 by the Governor-General, Arthur Frederick.

56 Senator, the *Hon* NJ de Wet KC.

57 Government Notice 1074, published on 30 June 1923.

58 Proclamation 244, published on 30 November 1923. The aim of the *Adoption of Children Act* was solely to provide for the adoption of children. According to Joubert "Interracial adoptions: can we learn from the Americans?" 1993 *SALJ* 726 the underlying object of the Act was to create an institution whereby the existing legal bonds between a child and its natural parents or guardians could be severed and a new legal bond created between the adoptive parents and the adopted child.

59 *Massachusetts Adoption of Children Act*, 1851: see Benet (n 2) 66. The United States gained independence from Britain in 1776.

60 Inglis *Family Law* (1968) 9; Else "The perfect solution: adoption law and practice in New Zealand [1]" 1987 *International J of the Sociology of Law* 240.

61 Inglis (n 60) 9.

62 *Ibid* 5. It was a British colony from 1840 until 1907.

63 *Ibid*.

became merely superficial. Family law is a branch of the law in which the New Zealand Legislature has shown itself at its most progressive,<sup>64</sup> as is illustrated, *inter alia*, by the fact that the *Infants Act* of 1908 of New Zealand was legislated long before the promulgation of the English adoption legislation in 1926.<sup>65</sup> The person who was responsible for the process that resulted in the early introduction of legal adoption in New Zealand was George Waterhouse, at the time a private member of Parliament.<sup>66</sup>

Because the South African *Adoption of Children Act* of 1923 was modelled on the *Infants Act* of 1908 of New Zealand, a brief comparison between the two acts is justified. The *Infants Act* of 1908 was a consolidation of several enactments.<sup>67</sup> The Act, which dealt with guardianship, custody, contracts and wills of infants,<sup>68</sup> adoption and protection of children and infants' homes, was divided into different parts. Part III,<sup>69</sup> which consisted of twelve sections, covered the adoption of children. The South African *Adoption of Children Act* of 1923, which regulated adoption only, consisted of seventeen sections. In New Zealand, adoption was presided over by a district court judge, but, in South Africa, by a magistrate. In general, the two acts were very similar, but there were a few important differences that need to be pointed out.<sup>70</sup>

#### ***Infants Act***

#### ***Adoption of Children Act***

A child is a boy or girl under the age of fifteen years. <sup>71</sup>	A child is a boy or girl who is, in the opinion of the court exercising jurisdiction under this Act, under the age of sixteen years. <sup>76</sup>
If over the age of twelve years, <sup>72</sup> a child has to consent to an adoption.	If over the age of ten years, <sup>77</sup> a child has to consent to an adoption.

64

*Ibid.*

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See "3 1 Introduction". Griffith (n 5) 191 tells us that New Zealand based the *Adoption of Children Act* of 1881 on American and German law.

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Griffith (n 5) 265-266.

67

Legislation dealing with children and infants dating back to 1879 was replaced by this Act.

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The act in this section refers to a male infant not under the age of nineteen years, and a female infant not under the age of eighteen years. Although the relevant ages differ, this would be comparable to what we refer to as a minor.

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Ss 15-26.

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The table below is not intended to point out all the differences between the two acts, but to highlight certain issues.

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S 15.

72

S 18(1)(d).

<p>No consent to an adoption is required in the case of a deserted child.<sup>73</sup></p>	<p>In the case of a deserted child, there is provision for the appointment of a guardian who has to consent to the adoption.<sup>78</sup></p>
<p>No provision is made for provisional orders.</p>	<p>A magistrate may make a provisional order<sup>79</sup> for a period not exceeding two years, rather than deciding immediately as to the grant or refusal of an order of adoption, under certain circumstances.<sup>80</sup></p>
<p>It is prohibited to receive any premium or consideration in respect of an adoption, except with the necessary consent.<sup>74</sup></p>	<p>The receipt of a premium or consideration is unlawful, but a person is allowed to make a settlement for the benefit of the adopted child, or to leave by will an inheritance or bequest to an adopting parent. A person contravening this section is guilty of an offence.<sup>81</sup></p>
<p>The manager of a benevolent or other institution established in connection with any religious denomination, and not maintained by Government subsidy, may apply in writing to adopt a child under certain circumstances.<sup>75</sup></p>	<p>There is no provision for adoption of this nature.</p>
<p>There is no provision for a child who has been adopted, to be put up for another adoption.</p>	<p>A child who has already been adopted may subsequently be put up for another adoption.<sup>82</sup></p>

Importantly, both Acts include a provision that an adoption could only be ordered if the welfare and interests of the child were promoted by the adoption.<sup>83</sup> However, as indicated in the table above, the South African

73 S 18(1)(f).

74 S 20.

75 S 24.

76 S 1.

77 S 4(1)(d).

78 S 4(1)(f).

79 This is an order committing a child to the care of an applicant or applicants.

80 S 5.

81 S 7.

82 S 11.

83 S 4(1)(c) of the *Adoption of Children Act*; S 18(1)(c) of the *Infants Act*.

Legislature did more to ensure the protection of children to be adopted: for example, by making provision for a guardian to look after the interests of a deserted child,<sup>84</sup> and by making provision for the possibility of a provisional order of adoption when the circumstances require it.<sup>85</sup>

#### 4 Conclusion

Bearing in mind what was said in the introduction, one would have expected adoption legislation in South Africa to be based on Roman-Dutch and/or English legal principles. This is not the case. As pointed out, legislation that existed in New Zealand formed the basis of our adoption legislation.<sup>86</sup> It is interesting that Roman law was considered when New Zealand adoption legislation, on which the South African legislation was originally modelled, was formulated. When Waterhouse introduced the *Adoption of Children Bill* in 1881, he explained that he had undertaken a thorough study of adoption that included historical and current adoption law practices. During his presentation to Parliament, he referred to Roman law as well as American, German and French legislation.<sup>87</sup> Although the extent of the influence of the Roman law is not clear, it is evident that it must have had some influence on the New Zealand and therefore also indirectly South African adoption legislation. The influence of New Zealand legislation on the introduction of legislation to regulate adoption in South Africa cannot be seen in isolation. Ultimately there were several legal systems that all impacted – some more, some less – on South African adoption law, and Roman law was but one of them.

In conclusion, one should take note of a problem that was touched upon by Mr Feetham when he introduced the adoption Bill in 1923.<sup>88</sup> He set out certain concerns about informal adoptions and the insecurity that existed for the different parties in such adoptions.<sup>89</sup> This was some 84 years ago, but today informal adoptions still appear to be a problem. Notwithstanding the tremendous progress that has been made with regard to adoption legislation,<sup>90</sup> it is a fact that informal adoptions still occur in South Africa.<sup>91</sup> An example of

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84 S 4(1)(f).

85 S 5.

86 Cf s 3 2 2 above.

87 Griffith (n 5) 265-266.

88 Cf s 3 2 1 above.

89 *Ibid.*

90 The *Child Care Act* 74 of 1983 currently regulates adoption. Although certain sections of the *Children's Act* 38 of 2005 came into operation on 1 July 2007, the sections dealing with adoption have not yet come into effect. When they do come into operation, the *Children's Act* will replace the *Child Care Act*.

91 In the novel *Agaat*, Marlene van Niekerk tells the story of Kamilla de Wet, the owner of a farm, who raises the child of one of the farm workers. Her relationship with Agaat, who was "rescued" by Kamilla from severe hardship and abuse when she was very young, forms the

this kind of adoption is where a family takes care of a domestic worker's child. Such a family may pay for the education of the child, and often the child lives as part of the "adoptive" family. Inevitably, strong bonds form between the "adoptive parents" and the child – a situation which may cause tension between the natural parent and the employers who feel they have a say in the upbringing of the child. With the unique circumstances that exist in South Africa,<sup>92</sup> this is a serious issue that may present even bigger problems in future, and it may need to be addressed by the Legislature.

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focus of the novel. See Nöthling Slabbert "Justice, justification and justifiability in Marlene van Niekerk's *Agaat*: a legal-literary exploration" 2006 (1) *Fundamina* 236. This interesting article explores the connection between law and literature.

92 The financial position of the natural parent very often plays a major part. A domestic worker is normally not in a position to offer the child what the employers can. The child may live on the premises with the mother, and therefore also with the employers.