ed repeal. The Conference called reception of healthy children an “act of phi-
lanthropy” that increased a community’s population and wealth, but the
request fell on deaf ears. By 1924, in the waning days of the orphan trains,
Missouri and twenty-seven other states had enacted restrictive child-impor-
tation statutes designed to stem the migration.119

The orphan trains ended in 1929, casualties of child welfare programs and
other social forces in the sending and receiving states alike. Sending states
began creating new programs to aid poor families in their own homes.
Where family distress made in-home care unfeasible, foster care enabled
sending states to place children locally. Court-approved adoption became a
more palatable local alternative to distant relocation.

Receiving states began losing sentiment for poor eastern children when
they developed their own local poverty once the western frontier closed late
in the nineteenth century. Child labor and compulsory education laws made
it difficult to get work from orphan train riders. The need for inexpensive
farm labor declined when economic distress hit family farms and the rural
heartland in the early twenties, even before the 1929 stock market crash dev-
astated the rest of the nation.

Missouri’s child importation crime remained on the books, and actually
became a valuable child protection measure by mid-century, a forerunner of
the Interstate Compact on the Placement of Children, which remains the law
in all states today. All the while, the orphan trains became an obscure foot-
note in American history. Few history books today even mention their sev-
enty-five-year run, and few schoolchildren hear the stories. In 1997, the
great-grandson of orphan train rider Joseph Aner wanted to write a term
paper about the trains. His eighth-grade teacher rejected his proposed out-
line, saying that the orphan trains were “a myth and never happened.”120

In the 1980s, as the number of living orphan train riders dwindled with the
passage of decades, some riders began speaking at public gatherings and meet-
ing halls and holding annual reunions.121 Between 1990 and 2002, twelve
reunions were held in Missouri—five in Jefferson City, five in Trenton, and one
each in Columbia and Monett. The state had an elaborate orphan train exhib-
it at the Capitol in Jefferson City in 2000. The verdict of history, and of the rid-
ers themselves, remains mixed. Like Elizabeth Wilde Daniel, many riders rec-
ognized that they were better off in Missouri after leaving the squalid urban
ghettoes of their birth. Other riders found their childhood journey a source of
lasting embarrassment and took their stories to the grave, reluctant to share
their experiences even with their own children and grandchildren.122

The orphan train riders and their descendants have enriched life in the
Missouri communities that became their new homes. Stories of their essen-
tially forced mass migration nonetheless argue persuasively for paying close
attention to the quality of foster care programs that remove children from distressed families today. Idealism doubtlessly motivated many of the orphan train operators, and many children like Joseph Aner and Elizabeth Wilde Daniel found better lives in Missouri and other midwestern states. But the physical and emotional hardships imposed on other riders remain part of the equation. These hardships teach what can happen when children are removed from their homes without careful consideration of reasonable alternatives, when foster parents are not carefully screened, when the children's living conditions are not reasonably monitored after placement, and when courts do not participate meaningfully in the process before and after placement.

Children Needing Adoptive Homes

The child savers' victory in their quest for adoption reform was a long time coming. Formal adoption did not exist at common law, which had no procedure for severing a child's legal relationship with natural parents and replacing it by a legal relationship with other parents. Children might be transferred informally from one household to another, sometimes by apprenticeship or guardianship to a family agreeing to provide care and education and perhaps needing labor. Children sometimes assumed the new family's surname, but informal transfer could not sever existing legal parent-child relationships and create new ones because no statute changed the common law.

Legislative adoption—that is, adoption of a child by special act of the General Assembly—was available in Missouri before the Constitution of 1865 prohibited special acts, but it was used only infrequently because it was ordinarily too cumbersome and expensive. The relatively few pre-1865 special adoption acts did not recite whether the adoptions served the child's interests, an understandable omission because legislative bodies are ill-suited to making best-interests determinations on particular facts, and because nothing in informal transfer practices suggested a central role for the child's interests.123

Massachusetts enacted the nation's first general adoption act in 1851. The act was a watershed, not only for encouraging other states to enact similar legislation changing the common law, but also for viewing adoption as a process requiring court approval and serving the child's interests and not the adults. The Massachusetts act authorized the probate court to grant an adoption petition on a showing that the prospective adoptive parents were "of sufficient ability to bring up the child, and provide suitable nurture and education." The court could order the adoption only on the natural parents' consent. If the child was fourteen or older, his or her consent was also
required. The court order terminated the child’s relationship with the natural parents, and the child became the adoptive parents’ child.124

Missouri’s first general adoption act, passed in 1857, chose a fundamentally different process that treated children more as property than as the focus of the law’s special concern. The Act enabled a person to confer inheritance rights on a child by deed “recorded . . . as in the case of conveyance of real estate.” Any person with capacity to contract could file the deed, which did not require consent from the court, the child’s natural parents or the child. The deed bound only its signatories. The act “only appl[jed] to free white persons,” and slave children were still transferred informally as property.125

Missouri’s adoption act left an important question unanswered. The act provided that the deed could confer inheritance rights on the adopted child. It also provided that adopted children held the same rights to support, maintenance and humane treatment from the adoptive parents as the children would have from their natural parents. A signatory could clearly create inheritance rights by deed, but could the signatory actually take custody of a child and become the new parent by merely executing and filing the deed of adoption, without the natural parents’ consent or signature?

The 1857 act’s terse provisions made it hard to discern exactly what the General Assembly had in mind. Because most adoptions previously done by special legislation had created both inheritance rights and custody rights, the lawmakers probably assumed the new deed process would also normally be used for both purposes, with most deeds carrying the signatures of both the natural and adoptive parents.

In most cases, the puzzle proved more apparent than real because adoption-by-deed was in fact normally used to transfer custody and not merely to create inheritance rights. Most filed adoption deeds carried the natural parents’ signatures. In In re Clements in 1883, the state Supreme Court confirmed that child custody could be transferred only by consent of the natural parents or of another person with power to transfer custody. Unless the natural parents consented by signing the deed, the deed did not or divest them of custody.126

For a half century, adoption-by-deed excluded many Missouri children who needed adoptive homes. Unless the natural parents conferred the power to transfer custody, even an orphanage or other institution did not hold that power and could do no more than house the child or arrange for foster care or other informal transfer. Consent to transfer custody could be secured from a living natural parent, but some children languished in institutions for lack of consent because they were homeless, abandoned or without living parents.127

When the General Assembly finally grappled with the custody-transfer question, it left adoption-by-deed intact but inched toward fuller protection
of vulnerable children. Legislation in the late 1890s, discussed earlier in this chapter, authorized court transfer of custody in limited circumstances. Legislation in 1909 provided more broadly that where a person wished to adopt a child who had no parent or guardian, the person could apply to the probate court, which would determine whether the proposed adoption was in the best interests of the child. If the court found in the affirmative, the adoptive parent could transfer custody by executing and filing the deed.\textsuperscript{128}

The 1909 legislation was an advance, but Missouri's first Children's Code Commission concluded in 1916 that state law still treated children like chattel by permitting most adoptions-by-deed to take place without judicial oversight. The Commission painted a bleak picture. "Parents can sign away their children to individuals or associations without any public record, or a proceeding in court. They may sell or dispose of them as with a piece of property. 'Baby-farming' for profit is a legal institution."\textsuperscript{129}

A 1913 St. Louis study exposed the lingering dangers of essentially unregulated child transfers. St. Louis adoptions-by-deed were often accomplished by private adoption agencies, which included both philanthropic societies and commercial for-profit entities. Commercial entities included midwives, lawyers, physicians and private maternity homes (a genteel name for places that housed young unwed mothers and arranged discreetly for adoption of their newborns).

Because they were steeped in stigma, commercial maternity homes invited abuses. In 1916, the first Children's Code Commission found the state's large cities "overstocked" with these facilities, "which receive hundreds of young, unmarried women from all over the state, and then dispose of their babies in ways unknown to the public . . ., with no system of after-care or supervision, and with no record whatever of what became of them." The commission described the recent burial of two infants who had been "bought" for five dollars each from a St. Louis maternity home.\textsuperscript{130}

The St. Louis commercial adoption entities were supposed to be licensed by the city Board of Health (a protection that did not yet exist statewide), but they did a brisk business while honoring the license requirement only in the breach. Helpless infants were sometimes the losers. Physicians reportedly sometimes "borrowed" babies to complete adoptions for waiting customers. ("I can get you a baby in two days with a little more expense, about $10.00, by borrowing one," said one. "We do that, you know, and then when I have a baby I can return it.") Most commercial for-profit entities did not care whether adoption deeds were ever filed, and most rarely followed up their placements to assure the children were well cared for.\textsuperscript{131}

Commercial adoption advertisements appeared daily in St. Louis newspapers. Some advertisements were for particular children ("A pretty baby girl;
may be had for the calling”). Other ads recruited unwed mothers seeking to avoid social stigma by delivering and placing the newborn privately: "BERRY LYING-IN HOSPITAL, 102 Carter Ave.; private, ladies received before and during confinement; physician; best of care; strictly confidential." Some placements were never recorded because recipients wished to hide the baby’s out-of-wedlock birth.¹³²

One observer concluded that as long as adoption-by-deed prevented judicial supervision, authorities could not prevent “traffic in babies and [the] practice of placing illegitimate children in homes without regard for their welfare.” Reports and rumors of adoption abuse clashed with Progressive reform sentiment. By permitting essentially unregulated transfer of children like real property, adoption-by-deed was an anachronism, and an often hurtful one at that.¹³³

The General Assembly repealed adoption-by-deed in 1917. Without upsetting relationships created by deeds previously filed, the lawmakers made adoption by juvenile court order the exclusive means of severing and creating parent-child relationships. Persons were prohibited from transferring or receiving custody of a child without court order. The child, and not just the natural and adoptive parents, was now a party to the legal process. Adoption required the natural parents’ consent, unless they were dead, insane or imprisoned for more than two years.¹³⁴

The new adoption act explicitly made the best interests of the child the touchstone. After a hearing without a jury, the court’s order depended on a finding that adoption would promote the child’s welfare because the prospective adoptive parents were “of good character, and of such sufficient ability to properly care for, maintain and educate” the child.¹³⁵

The juvenile court was required to appoint a guardian ad litem to represent the child. Indeed, if the child was twelve or older, adoption also required the child’s consent. Missouri courts would often observe younger children, or interview them in chambers, when they appeared old enough to express their feelings and preferences. Once the court entered the adoption order, all rights and obligations between the child and the natural parents terminated, and the child was deemed the child of the adoptive parents, just as if he or she had been born to them in lawful wedlock. The adoptive parent-child relationship was identical in law to the prior natural parent-child relationship, including full rights of inheritance among the adoptive parents, the child and other persons.¹³⁶

The Supreme Court of Missouri did not overstate the matter when it declared that the 1917 adoption act “radically change[d] the rights of adopted children.” With a stroke of the Governor’s pen, Missouri had become one of the last states to scrap adoption-by-deed, but one of the first to place
adoptions in the juvenile court, which was developing expertise in children's cases. The 1917 legislation, a sure indication of the General Assembly's growing confidence in the juvenile courts, created one of the nation's most progressive adoption acts and set the stage for further child protective adoption legislation in the 1940s.137

Transcendent social forces sometimes exert subtle influences on the legislative process. When the General Assembly passed the adoption bill in March of 1917, the lawmakers and the general public clearly knew the United States was about to enter World War I, the titanic struggle that would see Missouri adolescents from all social classes fight for the nation on the front lines. Patriotic demonstrations had already energized cities and towns across the state. President Woodrow Wilson delivered his war message to a joint session of Congress on April 2. The Senate declared war on Germany on April 4, the House followed suit in the early morning of April 6, and the President signed the declaration that afternoon. Missouri's newspapers immediately supported the war effort amid a wave of statewide loyalty and patriotism led by Governor Frederick D. Gardner.138

Governor Gardner signed the adoption bill on April 10, the same day that he signed legislation repealing the state's outdated apprenticeship statute and extending juvenile courts to the smaller counties. Only hours earlier, the President had committed the youthful doughboys to "make the world safe for democracy" by fighting overseas in the American Expeditionary Forces led by General John J. Pershing of Laclede. The Governor and Missouri lawmakers may have felt they were doing their part by interring an outdated deed procedure that likened children to property and denied adoption to many of the most needy.

The Beginnings of State Child Protection Programs

In nineteenth century America, most states expected counties or other municipalities to care for the poor and punish most criminals, including children. Federal involvement was still decades away. When local public initiative was wanting, private charity often made the difference for dependent children. In Missouri and elsewhere, steps toward state involvement and control proceeded gingerly.

In 1872, the General Assembly created a State Board of Guardians to "investigate the whole system of public charities, reformatory, and penal institutions in the state." The board won the support of Governor B. Gratz Brown, who praised its first report for exhaustively discussing "the whole question of pun-
ishment, as employed by the State for the benefit of society," and for urging better education of prisoners, including children. The Governor wanted to enlarge the board's powers, but the General Assembly felt differently. The lawmakers abolished the board in 1874, before it made recommendations concerning children's asylums or left a lasting record of its work.139

Abolition only increased reformers' desires for a state agency to manage and oversee the state's charitable and penal institutions. Shortly after they returned from the annual meeting of the National Conference of Charities and Correction in 1882, Bishop C.F. Robertson and Rabbi Solomon H. Sonneschein of St. Louis urged the General Assembly to create a single statewide management and oversight agency. With the proliferation of public and private institutions involved in charity and corrections, the Bishop argued that the governor, existing state departments and legislative committees could no longer assure effective and efficient management.140

Governor David R. Francis urged the General Assembly to establish a statewide agency in 1893. Mary E. Perry of St. Louis, one of Missouri's most influential voices on social welfare issues, led the campaign for enabling legislation. The lawmakers remained unmoved until 1897, when they created the State Board of Charities and Corrections. The board's mandate covered a smorgasbord that included all publicly supported prisons, jails, almshouses, reformatories, reform and industrial schools, hospitals, infirmaries, dispensaries, orphanages and public and private retreats and asylums. This prodigious list guaranteed that the board would interact with the juvenile courts because children were found in many of the covered institutions, including the Boonville and Chillicothe reformatories beginning in 1889, and the Tipton reformatory once it opened in 1916.141

Like boards of charities and corrections created in most other states during this period, Missouri's board could only inspect, investigate and report. Management authority remained decentralized in the boards of trustees of the various institutions, including ones housing delinquent and dependent children. The Missouri board's limited authority was compounded by inadequate state appropriations, which often left its members able to inspect state institutions only by relying on free transportation provided by the railroads. Because the railroads did not always cooperate, the board could not inspect all state institutions each year.142

Efforts to centralize management authority in the state board began almost immediately, but faced determined opposition from the various institutional boards themselves and from persons opposed to centralized state operation. Reformers' arguments that the state board should hold authority to correct abuses rather than merely investigate and report on them bore modest fruit
during the Progressive era, when arguments for professional public administration reached receptive ears. In 1911, Governor Herbert S. Hadley found "much room for improvement in the management" of the various state institutions. The Governor told the legislature that "a more concentrated system of control" vested in the state board would be "more efficient and economical" than the present system, which left each institution free to manage its own affairs with the state board on the sidelines as a virtual advisory bystander. In 1913, Governor Hadley urged the lawmakers to grant the board a more adequate budget and greater authority to deal with county jails and almshouses.143

In 1913, the legislature created the Missouri Children's Bureau within the State Board of Charities and Corrections and charged it with supervising and treating dependent children. The Bureau performed with limited appropriations until 1933, when it was abolished and its functions were assumed by the State Eleemosynary Board and later the state Social Security Commission.

In 1915, the state's first Children's Code Commission praised the Board of Charities and Corrections for being free of political influences and for compiling "a record of increasing service and usefulness." The General Assembly nonetheless rejected the commission's recommendations to further increase the board's powers, including a measure that would have authorized the board to close any state institution not performing its functions properly.144

Throughout the 1920s, the board's activities diminished because of reduced state appropriations. The board also lost portions of its jurisdiction to the Missouri State Prison Board (later called the Department of Penal Institutions), which replaced the individual boards of correctional institutions in 1917, and to the Board of Managers of Eleemosynary Institutions, which assumed management of institutions for the physically and mentally handicapped in 1921. In 1925, Governor Samuel A. Baker called for abolition of the State Board of Charities and Corrections.145

During the 1920s, the board's very name became a sticking point. Linking charities and corrections under a single agency umbrella did not seem odd when states created these boards in the late nineteenth century. Attitudes equating poverty with personal fault persisted in many quarters, correctional reform depended heavily on private charity, and general trial courts heard cases involving delinquent and dependent children alike. That was before the juvenile courts separated most cases involving these children from cases involving adult criminals. The charities-corrections linkage began to appear even more unseemly after the 1929 stock market crash, when public assistance began reaching thousands of desperate Missourians who knew they had done nothing wrong. As part of an economic package pushed by Governor Guy B. Park, the General Assembly abolished the State Board of Charities and Corrections on April 3, 1933, just as the New Deal was gearing up in Washington.
Even without management authority or sufficient appropriations for most of its thirty-six-year life, the board had a positive effect on the state. By informing the public about sometimes horrid conditions in prisons, almshouses and reformatories, the board’s investigations produced public embarrassment that forced improvements in many of the institutions housing children and adults alike. The board also argued tirelessly for a greater affirmative state role in the protection and care of delinquent and dependent children, and thus shares credit for gradually winning public acceptance of that role beginning in the early years of the twentieth century.¹⁴⁶